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J.E., Appellant)	
)	
and)	Docket No. 25-0602
)	Issued: August 11, 2025
U.S. POSTAL SERVICE, PROCESSING &)	
DISTRIBUTION CENTER FINANCE POST)	
OFFICE, San Francisco, CA, Employer)	
)	

Case Submitted on the Record

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

On June 8, 2025 appellant filed a timely appeal from a March 14, 2025 merit decision and an April 16, 2025 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

The issues are: (1) whether appellant has met his burden of proof to establish an emotional/stress-related condition in the performance of duty, as alleged; and (2) whether OWCP

² The Board notes that OWCP received additional evidence following the April 16, 2025 decision. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

properly denied appellant's request for an oral hearing as untimely filed, pursuant to 5 U.S.C. § 8124(b).

FACTUAL HISTORY

On June 21, 2024 appellant, then a 50-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that he developed anxiety and depression due to factors of his federal employment, including harassment, a hostile workplace, and retaliation by management after he filed an Equal Employment Opportunity Commission (EEOC) complaint. He noted that he first became aware of his claimed condition on May 29, 2024, and realized its relation to his federal employment on June 17, 2024. Appellant stopped work on May 29, 2024, and returned to work on August 31, 2024.

In a June 27, 2024 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of additional evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 60 days to respond. In a separate development letter of even date, it also requested that the employing establishment provide information, including comments from a knowledgeable supervisor regarding the accuracy of appellant's allegations. OWCP afforded the employing establishment 30 days to respond.

OWCP thereafter received a May 24, 2023 medical report by Xiomara Patricia Turk, a nurse practitioner, who noted that appellant related complaints of shortness of breath and heart palpitations, which he attributed to stress from T.B., his supervisor, including being chased, threatened, screamed at, and humiliated. Ms. Turk diagnosed anxiety, palpitations, and situational stress.

In an incident report dated August 2, 2023, appellant indicated that T.B. falsely accused him of violating his work restrictions.

In an August 29, 2023 request for or notification of absence, appellant requested to use annual leave to attend a religious service at his church on September 2, 2023. T.B. disapproved his request citing "operational needs."

In an October 23, 2023 statement, D.L., a union shop steward, indicated that on September 16, 2023 appellant requested medical assistance and was hyperventilating. M.W., a manager, told D.L. in the presence of appellant that he could go to the hospital on his own time and it was not the employing establishment's responsibility to bring him to the hospital.

In an October 26, 2023 letter, S.U., a customer on appellant's route, indicated that he personally witnessed T.B. harass appellant while he was trying to fulfill his duties, including following closely behind him and criticizing him loudly enough for S.U. to hear her comments. On May 23, 2023 S.U. observed and recorded T.B. following and filming appellant at 6:09 p.m. while T.B. was not on duty.

On November 14, 2023 appellant filed a grievance form, which indicated that on September 16, 2023 T.B. told him to work for eight hours, and he responded that, based upon the volume of mail, he believed that it would take over nine hours to complete the route. He submitted a USPS Carrier Auxiliary Control Form (PS Form 3996) which formally requested assistance/overtime. T.B. then went to M.W., who became aggressive towards appellant and demanded to "see his numbers." Appellant returned to his case and T.B., M.W., and another

supervisor confronted him and surrounded his case, badgering him and raising their voices. He immediately felt stressed and intimidated. Appellant started to feel sick and told D.L. that he did not feel well and was experiencing pressure in his chest and palpitations and needed to go to the hospital. M.W. started mocking him and smiling at him saying they could not do that. Appellant indicated that he told his physician what happened and was excused from work for three days.

In a note dated September 17, 2023, Dr. Paul L. Nadler, a Board-certified internist, indicated that appellant should remain off from work from September 16 through 18, 2023.

In a November 22, 2023 medical note, Gabriela Gomes, a nurse practitioner, diagnosed palpitations, anxiety, situational stress, and hypertension. She noted that appellant had stopped taking prescribed heart medication in September, had heart palpitations at work, and his blood pressure was high.

In an April 20, 2024 statement, R.K., appellant's coworker, indicated that on many occasions between April and September 2023 he witnessed T.B. approach appellant at his case and yell and argue with him.

In an April 22, 2024 statement, M.A., appellant's coworker, indicated that between April and September 2023, T.B. singled out appellant, intimidated him, and treated him in an unprofessional manner.

In an April 25, 2024 statement, V.G., appellant's coworker, indicated that it was unpleasant to work for T.B. V.G. also observed T.B. behaved crassly and in an unprofessional manner toward appellant, noting that T.B. did not treat fellow employees with respect or compassion, she created a toxic and unhealthy work environment, and she abused her power.

On May 7, 2024 appellant's request to take leave for a religious observance was denied due to operational needs.

In a form report dated May 9, 2024, appellant indicated that he was harassed by T.B. since March 2023, including bullying, yelling, and screaming at him on the workroom floor. S.L. signed the form on May 11, 2024 and checked a box to indicate that she could not determine whether a hazard exists, noting "improper use of this form."

In a May 31, 2024 statement, J.M., a union shop steward, indicated that he was present for conversations between appellant and S.L. on May 22, 23, and 24, 2024 during which they discussed what time code appellant should use while working on his EEOC discovery responses while on the clock. J.M. also observed him present S.L. with a written request for explanation as to why he could not receive administrative time off from work to complete EEOC discovery.

In an attending physician's report (Form CA-20) dated June 26, 2024, Dr. David C. Roberts, a licensed clinical psychologist, noted that appellant reported being harassed by his supervisor who followed him, screamed at him, and attacked his language and religious practices. He administered psychological testing and diagnosed major depressive disorder and generalized anxiety disorder. Dr. Roberts opined that the cause of the diagnosed conditions was the verbal attacks by his supervisor and indicated that appellant was totally disabled from all work for the period July 1 through August 1, 2024.

In a July 4, 2024 statement, appellant described several incidents as follows: in March 2023 he was assigned to deliver his route and half of another route, and T.B. and J.S., another supervisor, deliberately ignored his requests for help so that he would fail; T.B. issued him several warning letters without explanation, which the employing establishment rescinded; T.B. followed him on his route and yelled and screamed at him; his requests to use leave to attend religious observances were denied in 2023 and 2024; on July 21, 2023 he injured his left ankle while working and J.S. ignored his calls and texts for help; on August 11 and 12, 2023 T.B. changed his annual leave to leave without pay (LWOP) and falsified his time sheets; on September 16, 2023 T.B., M.W., and another unknown supervisor surrounded him in his case area on his work floor and were yelling and screaming; on May 7, 2024 T.B. addressed him with an offensive epithet; and on May 29, 2024 S.L. instructed him to cover another carrier's route during a time that she had previously approved him to work on his EEOC discovery responses and then lied that it was an emergency, stating that the other carrier had called out.

On July 4, 2024 OWCP received a statement by D.L., who noted that on May 29, 2024 S.L. and J.L. told him that there was an emergency and they needed appellant to deliver a route for another carrier. D.L. related that there were often open routes that needed to be covered by other carriers and that it was a pretext for S.L. and J.L. to characterize it as an emergency in order to force appellant to deliver the route when they knew he would be working on his EEOC discovery responses. D.L. indicated that S.L. and J.L. lied and told appellant that carrier F.L. called in sick when, in fact, S.L. had given F.L. the day off.

OWCP also received an undated statement by J.O., an employing establishment safety captain, who indicated she "witnessed T.B.'s harassment, bullying, and intimidation of appellant from April to September." J.O. described T.B. as "loud, drawing attention by yelling and screaming at whomever she's speaking with because she likes using her authority." J.O. indicated that if appellant asked T.B. questions, T.B. responded in a rude and hostile tone. J.O. also indicated that the union voted for T.B.'s removal because of her mistreatment of carriers.

In a July 10, 2024 response to OWCP's development questionnaire, S.L. disputed appellant's allegations and suggested that appellant was attempting to bolster his EEOC claim. She indicated that he was able to pick his overtime assignments every day and claimed that he became combative whenever management tried to counsel him regarding his performance.

In a July 31, 2024 prearbitration settlement agreement, representatives of the employing establishment and the union agreed that M.W. and T.B. failed to maintain an atmosphere of mutual respect when they surrounded appellant at his case, yelled, harassed, and intimidated him after he submitted a PS Form 3996 on September 16, 2023. The agreement also noted that T.B. and M.W. violated the national agreement and employment handbook when they failed to provide appellant medical treatment on September 16, 2023.

In a letter dated November 26, 2024, Dr. Roberts noted that appellant had been receiving acupuncture and psychotherapy and was showing improvement.

On December 4, 2024 appellant submitted a statement, which indicated that he had reviewed and disagreed with S.L.'s response to OWCP's questionnaire. He attached materials regarding his EEOC case.

In a December 10, 2024 medical report, Dr. Roberts diagnosed major depressive disorder, moderate single episode, and generalized anxiety disorder. He opined the diagnosed conditions and symptoms “flowed straight and direct from conditions at work, working under a particular supervisor.”

In a January 25, 2025 medical report, Dr. James A. Radford, a Board-certified family medicine specialist, noted that appellant related complaints of palpitations, dyspnea, and headache, which he attributed to recent abusive behavior from supervisors. He recommended that he remain off from work until January 30, 2025.

By decision dated March 14, 2025, OWCP found that appellant had established that several incidents occurred, as alleged, including that on May 23, 2023 T.B. followed and yelled at him on his route while on her personal time, and that on September 16, 2023 T.B., M.W., and an unknown supervisor surrounded him in his case area and yelled and screamed at him. However, it found that appellant had failed to establish a compensable employment factor, noting that evidence of record was insufficient to establish that the incidents rose to the level of error, abuse, discrimination, harassment, assault, or retaliation. OWCP also found that appellant had not established the other claimed incidents, as alleged. It concluded, therefore, that appellant had not sustained an injury in the performance of duty.

On April 15, 2025 appellant requested an oral hearing before a representative of OWCP’s Branch of Hearings and Review.

By decision dated April 16, 2025, OWCP denied appellant’s request for an oral hearing as untimely filed as he did not file the request within 30 days of issuance of OWCP’s March 14, 2025 decision.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA³ 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,⁴ 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.⁵ 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.⁶

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

³ *Supra* note 1.

⁴ *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).

⁵ *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).

⁶ *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).

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.⁷

Workers' compensation law does not apply to each and every injury or illness that is somehow related to a claimant's employment. 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 emotional reaction to 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 factors such as an employee's fear of a 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 However, the Board has held that where the evidence establishes error or abuse on the part of the employing establishment in what would otherwise be an administrative matter, coverage will be afforded.¹¹ In determining whether the employing establishment has erred or acted abusively, the Board will examine the factual evidence of record to determine whether the employing establishment acted reasonably.¹²

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.¹³ Mere perceptions of harassment, retaliation, or discrimination are not compensable under FECA.¹⁴ A claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence.¹⁵

⁷ *R.B.*, Docket No. 19-0343 (issued February 14, 2020).

⁸ *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).

⁹ *Lillian Cutler*, *id.*

¹⁰ *See G.R.*, Docket No. 18-0893 (issued November 21, 2018); *Andrew J. Sheppard*, 53 ECAB 170-71 (2001), 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

¹¹ *See O.G.*, Docket No. 18-0359 (issued August 7, 2019); *D.R.*, Docket No. 16-0605 (issued October 17, 2016); *William H. Fortner*, 49 ECAB 324 (1998).

¹² *B.S.*, Docket No. 19-0378 (issued July 10, 2019); *Ruth S. Johnson*, 46 ECAB 237 (1994).

¹³ *R.D.*, Docket No. 19-0877 (issued September 8, 2020); *Marlon Vera*, 54 ECAB 834 (2003).

¹⁴ *Id.*; *see also Kim Nguyen*, 53 ECAB 127 (2001).

¹⁵ *See K.F.*, Docket No. 23-0278 (issued August 7, 2023); *E.G.*, Docket No. 20-1029 (issued March 18, 2022); *S.L.*, Docket No. 19-0387 (issued October 1, 2019); *S.B.*, Docket No. 18-1113 (issued February 21, 2019).

ANALYSIS -- ISSUE 1

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

OWCP denied appellant's emotional condition claim on the grounds that he did not establish any compensable employment factors. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of FECA.¹⁶ The Board notes that appellant's allegations do not pertain to his regularly or specially assigned duties under *Cutler*.¹⁷ Rather, his allegations pertain to harassment/retaliation.

Appellant described multiple incidents in which T.B. intimidated, followed, and harassed him beginning in March 2023. In support of his claim, he submitted witness statements which corroborated his allegations. R.K. indicated that on many occasions between April and September 2023 he witnessed T.B. approach appellant at his case and yell and argue with him. M.A. noted that between April and September 2023, T.B. singled him out, intimidated him, and treated him in an unprofessional manner. V.G. related that she observed T.B. behaved crassly and in an unprofessional manner toward appellant. J.O. witnessed T.B.'s harassment, bullying, and intimidation from April to September and indicated that T.B. responded to his questions in a rude and hostile tone. S.U. personally witnessed T.B. harass appellant, follow closely behind him, and criticize him loudly enough for S.U. to hear. S.U. also indicated that on May 23, 2023 he observed and recorded T.B. follow and film him while T.B. was not on duty. Disputes and incidents alleged as constituting harassment that are established as occurring and arising from an employee's performance of his or her regular duties can constitute employment factors.¹⁸ The Board therefore finds that evidence submitted by appellant is sufficient to establish a pattern of harassment/retaliation as a compensable factor of employment.¹⁹

As OWCP found that there were no compensable employment factors, it has not analyzed or developed the medical evidence on the issue of causal relationship. Thus, the Board shall set aside OWCP's March 14, 2025 decision and remand the case for consideration of the medical evidence with regard to whether appellant has established an emotional/stress-related condition causally related to the compensable employment factor of a pattern of harassment/retaliation. After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision on appellant's emotional/stress-related condition claim.²⁰

CONCLUSION

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

¹⁶ *S.K.*, Docket No. 18-1648 (issued March 14, 2019); *Dennis J. Balogh*, 52 ECAB 232 (2001).

¹⁷ *See R.D. supra* note 13; *L.H.*, Docket No. 18-1217 (issued May 3, 2019); *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler, supra* note 9.

¹⁸ *S.K.*, Docket No. 23-0655 (issued September 18, 2023); *D.B.*, Docket No. 18-1025 (issued January 23, 2019); *David W. Shirey*, 42 ECAB 783 (1991).

¹⁹ *V.H.*, Docket No. 22-0882 (issued June 9, 2023); *C.B.*, Docket No. 20-1259 (issued July 15, 2022).

²⁰ In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.

ORDER

IT IS HEREBY ORDERED THAT the March 14, 2025 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. The April 16, 2025 decision is set aside as moot.

Issued: August 11, 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