

<sup>2</sup> The Board notes that, following the March 27, 2024 decision, OWCP received additional evidence. 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.*

### **FACTUAL HISTORY**

On November 28, 2023 appellant, then a 44-year-old general expeditor, filed an occupational disease claim (Form CA-2) alleging that he developed anxiety, post-traumatic stress disorder (PTSD), and an exacerbation of irritable bowel syndrome (IBS) due to factors of his federal employment, including harassment by a supervisor and retaliation following the filing of union-related charges. He noted that he first became aware of his claimed condition on January 1, 1988 and realized its relation to his federal employment on June 7, 2022. Appellant stopped work on November 23, 2023.

In an emergency department report dated June 17, 2022, Dr. Eric Bryan Schrandt, a Board-certified emergency medicine specialist, diagnosed a headache. He noted that appellant was “mildly hypertensive which could be related to the headache or the patient’s blood pressure may have caused a headache if he was under increased stress due to work situation.”

In a November 12, 2023 hospital discharge summary, Dr. Frederic M. Jones, a Board-certified emergency medicine specialist, diagnosed abdominal pain, diarrhea, and history of IBS.

In a form report dated November 23, 2023, appellant requested leave under the Family Medical Leave Act (FMLA) for “anxiety attack/PTSD.”

In a work excuse note and emergency room discharge instruction dated November 24, 2023, Dr. Andrew Bianchi, a Board-certified emergency medicine specialist, diagnosed anxiety and recommended that appellant remain off from work from November 23 through 25, 2023.

In an emergency department discharge instruction dated November 27, 2023, Dr. Jones diagnosed anxiety, work-related stress anxiety, and work-related stress. In a work excuse note of even date, he recommended that appellant remain out of work on November 27 and 28, 2023.

In letters dated November 30 and December 4, 2023, the employing establishment controverted appellant’s claim based upon fact of injury and causal relationship.

OWCP also received an observation of work practices form completed by D.S., appellant’s manager, and an employing establishment job description for general expeditor.

In a December 8, 2023 development letter, OWCP informed appellant that the evidence of record was insufficient to establish his claim. It advised him of the type of factual and medical evidence needed to establish his claim 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.

In a December 14, 2023 response, J.B., an employing establishment supervisor, indicated that appellant had a history of not following instructions from management and creating his own rules of how to run the dock. She related that when management would attempt to discipline him for his behavior, he would respond by filing Equal Employment Opportunity (EEO) complaints

and labor charges. J.B. noted that no employee observed, agreed with, or had documentation to support any of appellant's allegations.

On January 3, 2024 OWCP referred appellant, along with the medical record, a statement of accepted facts (SOAF), and a series of questions, to David M. Tobolowsky, a Board-certified psychiatrist, for a second opinion examination.

In a letter dated January 4, 2024, the employing establishment advised OWCP that appellant had returned to full-duty work, effective December 11, 2023.

In a report dated January 29, 2024, Dr. Tobolowsky reviewed the SOAF and medical records. He noted that appellant displayed a disorganized thought process; described paranoid thoughts, nightmares, and visual and olfactory hallucinations; and had a history of an automobile accident. Dr. Tobolowsky conducted a mental status examination and administered a Montreal Cognitive Assessment. He diagnosed unspecified schizophrenia spectrum and other psychotic disorder. Dr. Tobolowsky explained that appellant presented as severely emotionally disturbed with significant cognitive impairment and noted that he was not provided with records from a treating psychiatrist "with which to determine a relationship of his symptoms to work factors." He noted that he "may have had long-standing schizophrenia; a premorbid personality in the context of which work factors triggered psychosis; a significant traumatic brain injury from the auto accident which caused psychosis and neurocognitive impairment; or other possibilities." Dr. Tobolowsky opined that it was "medically unlikely that an unfavorable relationship with a supervisor was sufficient by itself to cause the clinical picture that I saw during the evaluation."<sup>3</sup>

By decision dated March 27, 2024, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish that the employment factors occurred, as alleged. It noted that he had only provided vague and general information without supporting evidence or specific examples, and had not responded to its development questionnaire. Consequently, OWCP found that appellant had not met the requirements to establish an injury as defined by FECA.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>4</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>5</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

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<sup>3</sup> On February 20, 2024 appellant filed a Form CA-1 alleging that on November 23, 2023 he developed PTSD and anxiety due to retaliatory harassment while in the performance of duty. By letter dated February 21, 2024, the employing establishment requested that OWCP correct the date of the alleged injury from January 1, 1988 to November 23, 2023.

<sup>4</sup> *Supra* note 1.

<sup>5</sup> *F.H.*, Docket No.18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

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 causally related to factors of a claimant's federal employment, he or she must submit: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to the condition; (2) rationalized medical evidence establishing an emotional condition or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the emotional condition is causally related to the identified compensable employment factors.<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> 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.<sup>13</sup> In determining whether the employing establishment has erred or acted abusively, the Board will

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<sup>6</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>7</sup> *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>8</sup> *See S.K.*, Docket No. 18-1648 (issued March 14, 2019); *C.M.*, Docket No. 17-1076 (issued November 14, 2018); *Debbie J. Hobbs*, 43 ECAB 135 (1991); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

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

<sup>10</sup> *See S.K.*, *supra* note 8; *D.T.*, Docket No. 19-1270 (issued February 4, 2020); *Thomas D. McEuen*, 41 ECAB 387 (1990); *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

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

<sup>12</sup> *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).

<sup>13</sup> *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).

examine the factual evidence of record to determine whether the employing establishment acted reasonably.<sup>14</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>15</sup> Mere perceptions of harassment, retaliation, or discrimination are not compensable under FECA.<sup>16</sup> A claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence.<sup>17</sup>

### 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.

OWCP denied appellant's emotional condition claim on the grounds that he had not established a compensable employment factor. The Board must, therefore, initially review whether the alleged incidents and conditions of employment are covered employment factors under the terms of FECA.<sup>18</sup>

Appellant has not attributed his emotional condition to the performance of his regular or specially assigned duties under *Cutler*.<sup>19</sup> Rather he has alleged that he sustained an emotional condition as a result of harassment and retaliation. Specifically, appellant alleged harassment by his supervisor and retaliation after filing union-related charges. However, no evidence corroborating his allegations was received. 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>20</sup> As appellant's allegations are unsubstantiated, the Board finds that he has not established a compensable employment factor under FECA. Thus, he has not met his burden of proof to establish an emotional/stress-related condition in the performance of duty, as alleged.

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<sup>14</sup> *B.S.*, Docket No. 19-0378 (issued July 10, 2019); *Ruth S. Johnson*, 46 ECAB 237 (1994).

<sup>15</sup> *R.D.*, Docket No. 19-0877 (issued September 8, 2020); *Marlon Vera*, 54 ECAB 834 (2003).

<sup>16</sup> *Id.*; see also *Kim Nguyen*, 53 ECAB 127 (2001).

<sup>17</sup> 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).

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

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

<sup>20</sup> *Supra* notes 16-18; see also *J.F.*, Docket No. 25-0100 (issued January 10, 2025); *L.E.*, Docket No. 22-1302 (issued December 26, 2023); *L.S.*, Docket No. 18-1471 (issued February 26, 2020).

As the Board finds that appellant has not established a compensable employment factor, it is not necessary to consider the medical evidence of record.<sup>21</sup>

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 in the performance of duty, as alleged.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the March 27, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 16, 2025  
Washington, DC

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

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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<sup>21</sup> See *V.A.*, Docket No. 25-0375 (issued May 5, 2025); *B.O.*, Docket No. 17-1986 (issued January 18, 2019) (finding that it is not necessary to consider the medical evidence of record if a claimant has not established any compensable employment factors); see also *Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).