

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

P.P., Appellant)	
and)	Docket No. 25-0846
U.S. POSTAL SERVICE, MID-ISLAND PROCESSING & DISTRIBUTION CENTER, Melville, NY, Employer)	Issued: December 12, 2025
)	
)	

Appearances:

Thomas S. Harkins, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On September 3, 2025 appellant, through counsel, filed a timely appeal from a March 26, 2025 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 May 6, 2023 appellant, then a 34-year-old tractor trailer operator, filed an occupational disease claim (Form CA-2) alleging that she experienced a panic attack due to factors of her federal employment, including harassment by a supervisor. She noted that she first became aware of her claimed condition and realized its relationship to her federal employment on January 22, 2021.³ Appellant did not stop work.

In a January 22, 2021 work slip, Andrea Buono, a physician assistant, recommended that appellant remain off work for one day. In an emergency room patient discharge sheet of even date, she diagnosed a panic attack. Ms. Buono also recommended that appellant “avoid coworker/enticing situation.”

In a letter dated June 10, 2021, Dr. Mary Yia, a family physician, released appellant to return to work on July 12, 2021. In a letter dated February 14, 2022, she again cleared her to return to work.

In statements dated May 10, 2023, appellant related that she experienced a panic attack at work on January 22, 2021, and was escorted by ambulance to a local medical center. She related that she received treatment for mental health decline between October 2019 and November 1, 2022. Appellant attributed her symptoms of anxiety and depression to “persistent harassing behavior” by S.K., her supervisor, and retaliation for reporting the alleged harassment.

In a development letter dated May 17, 2023, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of additional evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 60 days to respond.

OWCP thereafter received a statement dated December 13, 2020, wherein appellant related that S.K., while off duty, contacted the employing establishment from his home to ask her coworkers to check on her and make sure she was in the yard. She related that she felt uncomfortable that he was checking on her when he was not on duty. In a subsequent statement dated January 4, 2021, appellant noted that her work area was poorly lit and isolated. She also asserted that S.K. “bullied” her by giving her extra yard moves, pushed her into one-on-one conversations of a non-professional nature, and stood in her line of sight in a “creepy manner” with his arms crossed.

³ OWCP assigned the present claim OWCP File No. xxxxxx658. On May 6, 2023, appellant filed a Form CA-2 alleging that she developed a cardiac condition due to factors of her federal employment, including being yelled at and harassed by a supervisor. She noted that she first became aware of her condition and realized its relationship to her federal employment on April 12, 2023. OWCP assigned the claim OWCP File No. xxxxxx725.

In a statement dated December 14, 2020, appellant indicated that she believed S.K. took photographs of her while she was sitting in her trailer because he thought she was asleep while on duty. In a statement dated December 20, 2020, appellant asserted that S.K. stood within five inches of her, which caused her to be scared and feel unsafe in his presence.

In another statement dated December 24, 2020, appellant asserted that her pay was improperly docked 21 minutes for time that she went to a secluded location on the employing establishment's property to change her clothes. She reported the alleged pay issue on December 29, 2020, noting that the women's restroom did not have a secure lock and that she felt singled out because other employees were able to "come and go as they please."

In a statement dated December 25, 2020, appellant related that S.K. instructed her to drive a 53-foot dry van container to a processing and distribution center by herself in inclement weather. She became upset and requested a co-driver, and he agreed. Ten minutes later, S.K. determined that appellant was too upset to drive and took the keys from her and instructed her to sit in the breakroom.

In a statement dated December 26, 2020, appellant asserted that S.K. waved his telephone at her and said, "I got you." She became scared and drove away.

In a statement dated December 26, 2020, W.A., appellant's coworker, indicated that he told appellant that S.K. had hidden gloves in the office. He also noted that S.K. told her that she left her vehicle running, after which she showed him that she had the keys in her hand. W.A. also indicated that he noticed S.K. recording appellant behind her back.

In a statement dated December 30, 2020, appellant related that she was removed from the schedule for an overtime shift. S.K. told her that he took her off the schedule because she was not on the "overtime desire list." Appellant reported the issue to her union representative.

In a medical report dated January 26, 2021, Dr. Mary Yia, a family physician, noted that appellant presented for follow up after being treated in the emergency room on January 22, 2021 for a panic attack, which she attributed to learning that a supervisor who previously harassed her was returning to her duty station.⁴

In medical reports dated March 23, 2022 through May 8, 2023, Dr. Allen Lebovits, a licensed clinical psychologist, noted that appellant related complaints of anxiety, which she attributed to harassment at work by her supervisor. This included being followed, intimidated, written-up under false pretenses, subjected to invasion of her personal space, and subjected to staring. He diagnosed adjustment disorder, anxiety, depression, and acute stress reaction.

In a follow-up letter dated July 13, 2023, OWCP advised appellant that it had conducted an interim review, and the evidence remained insufficient to establish her claim. It noted that she

⁴ The case record contains a December 26, 2021 decision from the Equal Employment Opportunity Commission (EEOC) remanding appellant's claim back to the employing establishment for further development. The case record also contains an August 5, 2022 EEOC decision which granted the employing establishment's motion for summary judgment.

had 60 days from the May 17, 2023 letter to submit the necessary evidence. OWCP further advised that if the evidence was not received during this time, it would issue a decision based on the evidence contained in the record.

OWCP thereafter received a Family and Medical Leave Act form dated July 20, 2023 by Dr. Lebovits, who indicated that appellant experienced an acute stress reaction to “significant levels of work harassment and inappropriate behavior” at the employing establishment. He noted that she required weekly psychological counseling for “as long as she continues to work in a hostile environment.”

In an August 8, 2023 development letter, OWCP requested that the employing establishment provide information regarding appellant’s claim, including comments from a knowledgeable supervisor regarding the accuracy of appellant’s allegations. It afforded the employing establishment 30 days to respond.

OWCP thereafter received a January 11, 2021 union grievance outline, referencing appellant’s assertions of harassment and disparate treatment by S.K. It also received a statement dated January 22, 2021 by A.A., an employing establishment manager, who indicated that she observed appellant inside its operations building on several occasions despite an agreement with the union that appellant was to refrain from entering the building in an effort to avoid any type of confrontation with S.K.

In a September 7, 2023 response to OWCP’s development letter, the acting transportation manager for the employing establishment indicated that S.K. was transferred to another facility in November 2021 and appellant returned to her normal schedule four months later in March 2022.

On September 18, 2023, OWCP received an undated EEOC investigative affidavit wherein S.K. indicated that on December 13, 2020 he may have called the employing establishment while he was on his way to work to see if yard moves were being done. Also on that date, S.K. confronted appellant for being off premises while on the clock, she became irate, and he contacted another manager on duty to assist. He denied standing too close to her and indicated that she yelled and cursed at him. S.K. also denied taking pictures of her on December 14 or 26, 2020, and indicated that he was photographing faded lines on the bays, which was a safety issue. Regarding the December 25, 2020 incident, he noted that he assigned appellant to drive to Brooklyn, New York, which she initially refused because she had never been there. S.K. offered to print out turn by turn directions and she responded that she would feel unsafe driving while trying to read directions. He indicated that appellant became emotional, so he found another driver who volunteered to handle the run and allowed her to sit in the breakroom for the remainder of her shift. S.K. denied telling another employee to tell her that she had to personally “hand him” forms on December 30, 2020 and explained that his instruction was that she “hand in” the forms with carbon copies attached. He also related that he did not recall changing appellant’s schedule on December 30, 2020, but that it was not uncommon for him to make changes to the schedule based upon need. S.K. agreed that he posted signs on January 2, 2021 notifying employees that they were not permitted in the general/dispatch area without permission from management, but that appellant entered the area without permission, took paper out of the copier, and started screaming at him when he confronted her. He denied discussing a pending investigation with another employee on

April 14, 2021, or placing an obstruction in an aisle which damaged appellant's truck on April 18, 2021. S.K. related that he had no contact with appellant after January 2, 2021.

By decision dated May 30, 2024, OWCP denied appellant's emotional condition claim, finding that she had not established any compensable employment factors under FECA. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On November 15, 2024 appellant, through counsel, appealed to the Board. By order dated December 10, 2024, the Board vacated OWCP's May 30, 2024 decision and remanded the case to OWCP to administratively combine OWCP File Nos. xxxxxx658 and xxxxxx725, and to consider whether the files were duplicate claims, to be followed by a *de novo* decision.⁵

By *de novo* decision dated March 26, 2025, OWCP denied appellant's emotional condition claim, finding that she had not established any compensable employment factors under FECA. It also noted that appellant's claims under OWCP File No. xxxxxx658 and xxxxxx725 were not duplicative, as each claim referenced different supervisors, time frames, and circumstances.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁶ 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,⁷ 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.⁸ 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.⁹

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

⁵ *Order Remanding Case*, Docket Nos. 25-0118 & 25-0119 (issued December 10, 2024).

⁶ *Supra* note 2.

⁷ *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).

⁸ *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).

⁹ *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).

that the identified compensable employment factors are causally related to his or her emotional condition.¹⁰

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 do 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.¹¹ 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.¹²

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.¹³ 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.¹⁴ 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.¹⁵

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.¹⁶ Mere perceptions of harassment, retaliation, or discrimination are not compensable under FECA.¹⁷ A claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence.¹⁸

¹⁰ *R.B.*, Docket No. 19-0343 (issued February 14, 2020).

¹¹ *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).

¹² *Lillian Cutler*, *id.*

¹³ 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).

¹⁴ 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).

¹⁵ *B.S.*, Docket No. 19-0378 (issued July 10, 2019); *Ruth S. Johnson*, 46 ECAB 237 (1994).

¹⁶ *R.D.*, Docket No. 19-0877 (issued September 8, 2020); *Marlon Vera*, 54 ECAB 834 (2003).

¹⁷ *Id.*; see also *Kim Nguyen*, 53 ECAB 127 (2001).

¹⁸ 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

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

Appellant has not attributed her emotional condition to the performance of her regular or specially assigned duties under *Cutler*.¹⁹ Rather she has alleged that she sustained an emotional condition as a result of harassment, disparate treatment, and retaliation. OWCP denied appellant's emotional condition claim on the grounds that she had not established a compensable employment factor. The Board must, thus, initially review whether the alleged incidents and conditions of employment are covered employment factors under the terms of FECA.²⁰

Appellant has alleged a pattern of sexual harassment, bullying, intimidation, and threatening behavior by S.K. since October 2019. This included S.K. asking her personal questions while driving to and from an employing establishment location; yelling at her in front of other employees; singling her out by making her personally hand forms to him; singling her out by removing her name from the overtime list; checking whether she was in the yard while he was off duty; and denying her access to the general/dispatch area. 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.²¹ As appellant's allegations are unsubstantiated, the Board finds that she has not established a compensable employment factor under FECA.²² Thus, she has not met her burden of proof to establish an emotional/stress-related condition in the performance of duty, as alleged.

As the Board finds that appellant has not established a compensable employment factor, it is not necessary to consider the medical evidence of record.²³

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.

¹⁹ *Supra* note 10.

²⁰ S.K., Docket No. 18-1648 (issued March 14, 2019); *Dennis J. Balogh*, 52 ECAB 232 (2001).

²¹ *Supra* notes 16-17; *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).

²² Although W.A. asserted that he noticed S.K. recording appellant behind her back, this statement was vague and nonspecific.

²³ *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).

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the March 26, 2025 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 12, 2025
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