

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

K.W., Appellant

and

**U.S. POSTAL SERVICE, BELLE CHASSE
POST OFFICE, Belle Chasse, LA, Employer**

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**Docket No. 22-0877
Issued: February 5, 2025**

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
JANICE B. ASKIN, Judge

JURISDICTION

On May 21, 2022 appellant filed a timely appeal from an April 27, 2022 merit 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.

ISSUE

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

FACTUAL HISTORY

On April 21, 2021 appellant, then a 62-year-old supervisor of customer service, filed an occupational disease claim (Form CA-2) alleging that she had suffered from an emotional/stress-related condition for several years, which was aggravated by multiple incidents involving a

¹ 5 U.S.C. § 8101 *et seq.*

subordinate employee, including verbal assaults and an attempt by the employee to hit her with a postal vehicle. She asserted that, during one of the verbal assaults, she believed she would have been physically attacked if she had remained in the room. Appellant advised that she had been diagnosed with depression and anxiety and suffered panic attacks. She noted that she first became aware of her claimed conditions on June 20, 2019 and realized their relationship to her federal employment on March 25, 2021. Appellant stopped work on April 7, 2021.

In an accompanying statement, appellant advised that she had suffered from an emotional condition since September 2011 and had been diagnosed with depression and anxiety. She maintained that her emotional condition had previously been controlled, and that she had been able to perform her duties as a supervisor at the employing establishment. However, with respect to the present emotional condition claim, appellant asserted that on June 20, 2019 she was “verbally assaulted” by K.S., an employee under her immediate supervision, while she was performing her work duties. She claimed that on December 21, 2020 K.S. subjected her to a hostile verbal assault when she questioned her about not recording lunch breaks on her timesheet. Appellant alleged that this incident was witnessed by C.B., the facility postmaster and appellant’s immediate supervisor, who had walked into the workroom at the point she told K.S. she had to either report to the management office or leave the building. She asserted that when she attempted to explain the situation, K.S. continued her insubordination and called her a liar every time she spoke. Appellant advised that the incident started when K.S. demanded that she leave her mail case and indicated that she feared leaving the mail case because she would have to pass through K.S.’ personal space, thereby giving K.S. the opportunity to assault her. She further claimed that, on January 4, 2021, K.S. deliberately accelerated the speed of her postal vehicle while driving on the employing establishment’s premises, causing her to step back and requiring K.S. to turn the vehicle’s steering wheel to keep from hitting her. Appellant asserted that this constituted a deliberate attempt by K.S. to hit her with the postal vehicle.

Appellant claimed that, on February 1, 2021, K.S. caused another disruption on the workroom floor. She indicated that she followed K.S. into C.B.’s office, and that K.S. acted in an “angry and vicious” manner by yelling and screaming at her. Appellant asserted that she told C.B. that K.S. had recorded her without her knowledge, but the recording proved that K.S. was the only person yelling and screaming in the workplace. She maintained that K.S.’ unauthorized recording of her violated employing establishment rules, and indicated that by the time of the February 1, 2021 incident, she feared that K.S. would physically attack her. Appellant asserted that, in March 2021, she learned *via* e-mail that the human resources office of the employing establishment was not supporting her efforts to correct K.S.’ abusive and aggressive behavior. She noted that an e-mail indicated that no corrective action would be taken against K.S., and that she would be allowed to return to work. Appellant claimed that the human resources office deliberately delayed its response to the request for corrective action so that the request would become untimely. She asserted that the human resources office was more concerned about returning K.S. to work than her own safety in the workplace. Appellant claimed that K.S. made it known that C.B. was her close friend outside of the office, and that K.S. engaged in verbal assaults against her whenever she attempted to provide instruction or obtain information about her work duties. She asserted that K.S. wrongly accused her of “hollering and screaming” at her.

In an April 26, 2021 development letter, OWCP notified appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed and provided a

questionnaire for her completion. In a separate development letter of even date, OWCP requested that the employing establishment answer several questions about appellant's work duties and performance and requested that it obtain comments from a knowledgeable supervisor regarding her allegations. It afforded both parties 30 days to respond.

In a May 5, 2021 response OWCP's development questionnaire, appellant asserted that K.S. was issued a suspension for her actions on June 20, 2019, and that she believed that K.S. would have assaulted her on February 1, 2021 if she had stayed in the same room with her on that date. Appellant indicated that K.S. was "placed off the clock" due to her behavior of February 1, 2021 and asserted that this action could not have happened without C.S.' approval. She repeated her assertion that K.S. attempted to hit her with a postal vehicle on January 4, 2021.

Appellant submitted a statement she had produced on February 7, 2021 regarding the claimed events of February 1, 2021. She asserted that she was speaking to K.S. about her mail delivery route, and that K.S. began speaking to her in a loud and aggressive manner with her hands on her hips such that she believed that she "was ready to attack at any moment." Appellant claimed that K.S. shouted "I will" after being told that she had a right to refuse unwanted scheduling on her mail delivery route. She again asserted that on January 4, 2021, K.S., almost hit her with her postal vehicle as she sped out of the employing establishment parking lot.

In an undated statement concerning the claimed events of June 20, 2019, appellant indicated that she had a conversation with K.S. on that date regarding her mail delivery route. She alleged that after K.S. repeatedly asked her about a missing document concerning her mail delivery route, and made demands about addressing the issue, she told K.S. that she did not need her to tell her how to perform her job. Appellant asserted that K.S. then "exploded," and screamed that she could not perform her supervisory job and was "miserable" about not getting the postmaster position. She claimed that K.S. then screamed, "That is why your husband is cheating on you," repeated the same statement as she walked away, and also stated that her stepchildren hated her and that she could see why. Appellant asserted that K.S. then stated that she knew who her husband was cheating with, and that when asked whether she was cheating with her husband, K.S. responded, "I wouldn't have a man that you wanted." She maintained that she had never previously had a conversation with K.S. about her husband or children.

In an undated statement, appellant provided additional details regarding her interactions with K.S. She asserted that, on December 21, 2020, K.S. failed to follow her instructions to report to the back office, and then began to yell, scream, and flail her arms. Appellant indicated that K.S. stated that she was not going into the back office and screamed, "[T]his is what you always do." She asserted that C.B. then arrived at the office where the conversation was taking place, and K.S. repeatedly called her a liar when she attempted to explain to C.B. what had transpired. Appellant indicated that C.B. admonished K.S. several times to lower her voice and calm down. She claimed that she attempted to close the door after C.B. left the office, but that K.S. then shoved the door back open. Appellant asserted that on December 29, 2020 K.S. was involved in a disruptive verbal altercation with A.D., a coworker, regarding a request by C.B. for A.D. to provide K.S. assistance in delivering parcels. She claimed that the argument escalated to the point that K.S. and A.D. could be heard in the retail unit and C.B.'s office, and that both K.S. and A.D. failed to follow C.B.'s instructions to stop shouting and calm down. Appellant asserted that on January 4, 2021 K.S. accelerated the speed of her postal vehicle "in a threatening manner" as she approached the

driver's side of the vehicle in an attempt to speak to her, thereby almost hitting her with the vehicle. She claimed that, after accelerating the vehicle, K.S. turned the steering wheel to avoid hitting her, and zoomed past her to exit the employing establishment's parking lot. Appellant asserted that K.S. indicated that, after she passed appellant, she stopped and got out of her vehicle to make a recording showing that appellant was in the parking lot. She noted, however, that K.S. stated that she did not stop to see if there was a problem or some information that needed to be communicated, because she did not want to get into a confrontation with her before going on her mail delivery route.

Appellant submitted e-mail correspondence between her and various coworkers/management officials dated 2020 and 2021. The communications primarily concerned K.S.' work and leave usage status, and a request for removal issued to K.S. regarding the December 21 and 29, 2020, and January 4 and February 1, 2021 incidents. In a February 2, 2021 e-mail to appellant, S.A., an employing establishment labor relations specialist, indicated that more evidentiary development was needed to determine whether the request for removal was justified. In a February 20, 2021 e-mail to S.A., appellant expressed disappointment that the request for removal would not be processed at that time. In February 19 and March 18, 2021 e-mails sent to appellant and others, S.A., from the employing establishment labor relations department, advised that, although K.S. was placed on emergency placement leave on February 1, 2021, it was "unable to write" a removal action regarding K.S. for several reasons, including inadequate documentary support.²

Appellant also submitted medical reports dated 2011 through 2021 in support of her claim, including reports of attending Board-certified psychiatrists, Dr. Broderick L. Pinkney and Dr. Jamie Hutchinson.

In an April 29, 2021 statement, C.B. discussed appellant's allegations, noting that with respect to the claimed December 21, 2020 incident, she believed that this referred to the occasion she walked into the worksite when appellant and K.S. were talking, and that K.S. was the only person speaking in a loud tone. She indicated that appellant advised her that she was talking to K.S. about her mail delivery route assignment, and noted that K.S. stated that appellant was a bully and spoke to her in a hostile and belittling manner. Regarding the claimed January 4, 2021 incident, C.B. indicated that she was sitting in her personal vehicle when it occurred, but "did not see the situation" as she was on her telephone, and had her head down to write something. She advised that the only part of the incident she did witness was appellant walking and a postal vehicle "pulling off." C.B. stated that she was not aware of what was alleged to have transpired until appellant stated that K.S. "pulled off and she could have been hit." She indicated that on February 1, 2021, while she was talking to K.S. in her office, appellant came into the office and stated that K.S. "had another outburst" when she discussed her mail delivery route with her. C.B. asserted that K.S. then started screaming, "I'm telling [C.B.] about what happened." She indicated that she asked K.S. to calm down. C.B. noted that she supported appellant's decision to place K.S.

² In a December 29, 2020 e-mail to appellant, C.B. indicated that on that date she heard K.S. and A.D. engaging in a "verbal shouting match" regarding a work assignment, and that the "tone and body language" of both were unprofessional.

off the clock on emergency placement status until she could further investigate the February 1, 2021 incident.

C.B. indicated that K.S. later played a recording on her telephone of a conversation between her and appellant on February 1, 2021. She advised that she told K.S. it was forbidden to record appellant in the workplace, and C.B. admitted she had recorded appellant on February 1, 2020 without asking her permission. C.B. denied that she told appellant that she was friends with anyone in the workplace, including K.S., and asserted that she treated all employees in the same fair manner. She asserted that it was not her decision to issue the letter of removal to K.S., but noted that she concurred with the disciplinary action. C.B. advised that she called K.S. into her office on April 2, 2021, and informed her that she was bringing her back to work, but also told her that she must follow appellant's instructions, and not engage in loud talking or disruptive behavior. She indicated that she never had "performance or conduct problems" with appellant, but also stated, "I have witnessed [appellant] speaking to employees in an unprofessional manner or harsh manner and have spoken to her about this." C.B. claimed that she was never given any information about appellant's emotional condition and, with respect to the alleged events of June 20, 2019, she indicated, "I can't recall what happened without knowing what occurred during this particular incident."

In a June 17, 2021 brief, appellant's then-representative argued that appellant had established the alleged employment factors as described.

In an October 8, 2021 statement, C.B. indicated that the "video from the incident with [appellant and K.S.] from the parking lot showed [appellant] walking up to the [vehicle] and then [K.S.] ... pulling off." She indicated that she did not "see what happened" prior to watching the video and stated, "I only watched the video and that's what I remember it showed."

By decision dated October 20, 2021, OWCP denied appellant's emotional condition claim, finding that she failed to establish a compensable employment factor.

On November 3, 2021, OWCP received additional medical evidence that appellant submitted in support of her claim.

On January 30, 2022, appellant requested reconsideration of the October 20, 2021 decision. She provided a statement in which she provided further details regarding her claimed employment factors and challenged OWCP's denial of her claim. Appellant also submitted additional medical evidence, and a brief in which her then-representative argued that she sustained a work-related emotional condition.

On January 30, 2022, OWCP received a July 17, 2019 disciplinary action, signed by appellant on July 17, 2019 and by C.B. on an illegible date, which was entitled "Notice of Fourteen (14) Day No-Time-Off Suspension." The document was drafted by appellant, and she indicated that the first charge of the disciplinary action was for "Improper Conduct." She asserted that on June 20, 2019 K.S. disrupted the workroom floor when she began "yelling and screaming verbal assaults" at her. On this date, K.S. approached her, and informed her that she was missing a work document (PS Form 4240). Appellant indicated that K.S. later asked her if she had contacted other stations in the workplace to search for the PS Form 4240, and she informed K.S. that she did not

need her to tell her how to do her job. K.S. then yelled on the workroom floor that appellant did not get a postmaster position because she did not know how to do her job, and that she was a miserable person because she did not get a promotion. Appellant indicated, “[t]hen, you commented on the workroom floor that my own stepchildren do not like me and that my husband is cheating on me.” She then noted that the second charge of the disciplinary action was “Failure to Follow Instructions.” Appellant asserted that on June 21, 2019 she made an announcement on the workroom floor that everyone must gather around for a group meeting, but K.S. ignored her requests to attend the meeting. She indicated that, during a June 28, 2019 investigative interview with her union steward present, K.S. confirmed commenting on the workroom floor about her not getting a postmaster position, and did not deny making comments about her stepchildren not liking her.

On January 30, 2022, OWCP also received a document, signed by appellant on January 15, 2021 and by C.B. on January 21, 2021, which was entitled “Louisiana District Discipline Request.” In this document, appellant described several alleged incidents, which served as the basis for the proposed removal of K.S. from the employing establishment. She asserted that on December 21, 2020 K.S. “flew into rage” when she came into the workplace. Appellant indicated that K.S. raised her voice and began screaming at her to get out of her work case. She advised that she instructed K.S. multiple times to report to the back office in order to “take the disruption off of the floor.” Appellant asserted that K.S. failed to follow instructions by not reporting to the back office, and continued to engage in the disruptive behavior. She further indicated that on December 29, 2020 K.S. was involved in a loud verbal altercation with A.D., which occurred after K.S. failed to deliver parcels and packages on her assigned mail route, and returned them to the office for A.D. to deliver. Appellant maintained that the argument between K.S. and A.D. was loud enough to be heard in the retail unit of the facility. She indicated that C.B. instructed K.S. to calm down and stop her arguing, but K.S. failed to follow these instructions. Appellant asserted that on January 4, 2021 K.S. accelerated the speed of her postal vehicle “in a threatening manner” as she approached the vehicle to speak with her. She maintained that K.S. “violated the [z]ero tolerance [p]olicy when she engaged in this threatening behavior” against her and committed safety violations “while operating a motor vehicle in a parking lot with the intent to cause harm or danger to another.” Appellant also indicated, “See attached summary for 3 incidents that [were] investigated on January 4, 2021 and January 15, 2021.” However, no such document was attached.

Appellant submitted a November 13, 2021 statement in which L.R., a coworker, indicated that she was present in the mail case next to K.S. on June 20, 2019, when K.S. yelled out that appellant’s husband was cheating on her. L.R. stated that K.S. “mentioned [appellant’s] husband cheating and something about her kids hating her,” and that K.S. said that appellant did not know how to do her job and that she could do it better. She indicated that appellant did not yell at K.S., and further noted that K.S. was “yelling insults” at appellant. L.R. stated that K.S. always acted in a loud and obnoxious manner toward appellant.

Appellant submitted excerpts from a January 7, 2021 “investigative interview” with K.S. The document consists of various allegations made about K.S. and K.S.’ responses to the allegations. K.S. asserted that appellant was not present when she had a discussion with A.D. on December 29, 2020. She claimed that appellant started verbal altercations with employees, including herself. K.S. denied that she created a disruption at work on December 21, 2020, or that she attempted to strike appellant with her postal vehicle on January 4, 2021. She asserted that on

January 4, 2021 she hit the brakes when appellant walked in front of her vehicle while it was moving, and that she “yelled and gestured why was [appellant] standing in front of the mail truck.” K.S. indicated that she did not accelerate her vehicle as alleged, and that she left the parking lot without acknowledging appellant because she wished to avoid a confrontation.

Appellant submitted statements detailing the observations of several other employees. In a December 21, 2020 statement, J.H. indicated that on an unspecified date she heard K.S. and appellant yelling “as the conversation escalated,” but that she could not specifically hear what was actually said. In a December 30, 2020 statement, B.W. indicated that she heard a “commotion” taking place between K.S. and A.D. on December 29, 2020, but she was not close enough to hear any specific words being said. Several other employees provided similar accounts of the December 29, 2020 incident. In several statements dated February 1, 2021, employees answered questions about their knowledge of a workroom disruption on that date. Several of the employees indicated that they heard K.S. speaking to appellant in a loud voice. In another February 1, 2021 statement, an individual with an illegible signature indicated that K.S. raised her voice to appellant on that date.

Appellant also submitted additional medical reports and copies of disciplinary actions that K.S. had received.

By decision dated April 27, 2022, OWCP denied modification of its October 20, 2021 decision.

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 filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged, and that any disability or specific 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 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

³ *Id.*

⁴ A.J., Docket No. 18-1116 (issued January 23, 2019); *Gary J. Watling*, 52 ECAB 278 (2001).

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

evidence establishing that the accepted compensable employment factors are causally related to the diagnosed emotional condition.⁶

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. 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.⁷ On the other hand, the disability is not covered where 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.⁸

ANALYSIS

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

Appellant has alleged that she sustained an emotional/stress-related condition due to the performance of her regular or specially assigned duties under *Lillian Cutler*.⁹ Specifically, she alleged that she was "verbally assaulted" by K.S., an employee under her immediate supervision, while performing her regular federal work duties as a supervisor. Witness statements in the case support that these verbal altercations with K.S. occurred over an extended period and were varied in nature. Appellant further alleged that, on January 4, 2021, K.S. deliberately attempted to hit her with a postal vehicle, and that she was required to initiate disciplinary actions against K.S.

The Board has held that conditions related to stress from situations in which an employee was performing his or her regular or specially assigned duties is compensable.¹⁰ The evidence of record demonstrates the challenges that appellant faced when performing her regular assigned duties as a supervisor. The Board thus finds that appellant has established a compensable work factor under *Cutler*.¹¹

⁶ See *S.K.*, Docket No. 18-1648 (issued March 14, 2019); *Debbie J. Hobbs*, 43 ECAB 135 (1991); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

⁷ *Lillian Cutler*, 28 ECAB 125 (1976).

⁸ *A.E.*, Docket No. 18-1587 (issued March 13, 2019); *Gregorio E. Conde*, 52 ECAB 410 (2001).

⁹ See *supra* note 7.

¹⁰ *Id.*

¹¹ *Id.* See also *C.F.*, Docket No. 20-1070 (issued August 9, 2023); *S.M.*, Docket No. 14-0224 (issued April 23, 2014); *C.C.*, Docket No. 12-0810 (issued September 6, 2012).

As OWCP found there were no compensable employment factors, the case must be remanded for an evaluation of the medical evidence with regard to the issue of causal relationship.¹² Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the April 27, 2022 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings in accordance with this decision of the Board.

Issued: February 5, 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

¹² *Id.*; see also *M.D.*, Docket No. 15-1796 (issued September 7, 2016).