

² The Board notes that following the November 1, 2024 decision, OWCP received additional evidence. 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.*

FACTUAL HISTORY

On November 16, 2023 appellant, then a 47-year-old city carrier assistant 1, filed an occupational disease claim (Form CA-2) alleging that she suffered from anxiety, depression, high blood pressure, migraines, lack of sleep, dizziness, and rapid heartbeat due to factors of her federal employment. She explained that in March her supervisor told her that two male coworkers had requested that she wear a bra, which made her feel shocked and uncomfortable. Appellant noted that she first became aware of her condition and realized its relationship to her federal employment on March 8, 2023.

In support of her claim appellant submitted a March 22, 2023 medical note, wherein Vicki Jessop, a certified family nurse practitioner, requested that appellant be excused from work from March 22 to 24, 2023 due to injury/illness.

In a narrative statement dated March 28, 2023, appellant related that she had filed a grievance regarding her supervisor, C.B., who had shamed her by telling her that two male coworkers had asked that she adjust her bra or wear a larger size.

An after-visit summary dated November 15, 2023 noted that appellant was seen that day by Dr. Angela Moughni, an osteopathic family practice physician, for anxiety and depression.

In a development letter dated November 20, 2023, OWCP informed appellant that the evidence of record was insufficient to establish her claim. It advised her of the type of factual and medical evidence needed to establish her claim and provided a questionnaire for her completion. OWCP afforded appellant 60 days to provide the necessary evidence.

OWCP subsequently received additional medical evidence. In a November 28, 2023 report, Dr. Hon Chan, an osteopathic physician specializing in psychiatry, noted appellant's history of an incident at work during which she was accused of dressing inappropriately. He diagnosed depression disorder based upon appellant having a depressed mood for more than two years and complaints of insomnia, poor appetite or overeating, low self-esteem, poor concentration, low energy or fatigue, feelings of hopelessness, and difficulty making decisions.

In a development letter dated January 25, 2024, OWCP requested that the employing establishment provide additional information regarding appellant's claim, including comments from a knowledgeable supervisor. It afforded the employing establishment 30 days to provide the requested information.

OWCP subsequently received documentation concerning appellant's Equal Employment Opportunity (EEO) complaint and dispute resolution.

In a narrative statement dated January 11, 2024, appellant related that she had been suffering from anxiety and depression since the March 8, 2023 incident. She related that she requested an investigation into the supervisor involved.

Thereafter, OWCP received appellant's April 28, 2023 request for immediate transfer to another postal facility and a May 20, 2023 grievance settlement agreement approving her transfer effective May 20, 2023.

Discharge instructions from an urgent care facility dated November 7, 2023 noted an unspecified anxiety state and instructed appellant to follow up with her primary care physician.

In a March 18, 2024 statement, C.B. explained that male coworkers had complained that appellant was inappropriately dressed. On March 8, 2023, C.B. informed appellant about the complaints. She did not disclose who made the complaint.

In a statement dated March 19, 2024, F.H., Postmaster, related that appellant came into her office with K.G, a carrier, and L.D., a supervisor. Appellant stated that two male employees had complained to C.B. that she was inappropriately dressed, and that she did not know who the employees were. F.H. spoke with C.B. who said there was only one employee, C.M. who had complained. C.M. told F.H. that while walking past appellant he saw that her breast had come out of her bra and was exposed. He said something to F.H. as he felt uncomfortable saying something to appellant, however, if it was his wife or child, he would want someone to say something. F.H. explained C.M.'s concerns to appellant without disclosing his name.

In a note dated March 19, 2024, Marixa Zenas, a certified physician assistant, advised that since November 2023 appellant has been undergoing psychiatric medication and therapy for major depressive disorder, panic disorder and generalized anxiety disorder. An April 4, 2024 note from Ms. Zenas indicated that appellant had reported a worsening of a mental disorder and gastrointestinal symptoms following a traumatic brain injury.

By decision dated June 3, 2024, OWCP denied the claim, finding appellant had not established a compensable factor of employment. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On July 2, 2024 OWCP received appellant's July 1, 2024 request for a review of the written record by a representative of OWCP's Branch of Hearings and Review.

In support thereof, appellant submitted a June 28, 2024 note, wherein Dr. John Head, Jr., an osteopathic physician specializing in psychiatry, noted that appellant had been undergoing psychiatric medication management and therapy for major depressive disorder, panic disorder and generalized anxiety disorder.

On July 3, 2024 OWCP received a statement wherein appellant asserted that supervisor C.B. had lied to cover-up the March 8, 2023 incident.

By decision dated November 1, 2024, OWCP's hearing representative affirmed the June 3, 2024 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

³ *Supra* note 1.

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 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. In the case of *Lillian Cutler*,⁷ the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under FECA.⁸ There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within the concept or coverage of workers' compensation.⁹ When an employee experiences emotional stress in carrying out his or her employment duties and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability results from his or her emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of the work.¹⁰

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.¹¹ Where 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

⁴ *A.F.*, Docket No. 24-0952 (issued December 13, 2024); *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); *A.F.*, *id.*; *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).

⁶ *A.F.*, *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).

⁷ 28 ECAB 125 (1976).

⁸ 5 U.S.C. § § 8101-8193.

⁹ *A.F.*, *supra* note 4; *G.R.*, Docket No. 18-0893 (issued November 21, 2018); *Robert W. Johns*, 51 ECAB 136 (1999).

¹⁰ *Id.*

¹¹ *A.F.*, *supra* note 4; *Charles D. Edwards*, 55 ECAB 258 (2004).

employment factor.¹² A claimant must support his or her allegations with probative and reliable evidence.

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 are not compensable under FECA.¹⁴ A claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence.¹⁵ Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.¹⁶

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.

The Board must initially review whether the alleged incidents and conditions of employment are covered employment factors under the terms of FECA.¹⁷ Appellant has not attributed her emotional/stress-related condition to the performance of her regular or specially assigned duties under *Cutler*.¹⁸ Rather, she alleged that she sustained an emotional/stress-related condition as a result of an administrative action taken by a supervisor.

Appellant attributed her emotional condition to a March 8, 2023 meeting with C.B., her supervisor, regarding her attire. In a March 18, 2023 statement, C.B. explained that male coworkers had requested that she tell appellant to put on a bra. C.B. did not disclose who made the complaint. Appellant has not submitted any evidence to support that C.B. erred or acted unreasonably when addressing the complaints with appellant regarding her attire. Thus, she has not established a compensable employment factor with respect to the administrative matter.¹⁹

¹² *A.F., id.*; *Kim Nguyen*, 53 ECAB 127 (2001). *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

¹³ *A.F., id.*; *S.B.*, Docket No. 18-1113 (issued February 21, 2019).

¹⁴ *Id.*

¹⁵ *See S.G.*, Docket No. 22-0495 (issued November 4, 2022); *J.F.*, 59 ECAB 331 (2008); *Robert Breeden*, 57 ECAB 622 (2006).

¹⁶ *A.F., id.*; *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).

¹⁷ *A.F., supra* note 4; *S.K.*, Docket No. 18-1648 (issued March 14, 2019); *Dennis J. Balogh*, 52 ECAB 232 (2001).

¹⁸ *Supra* note 7.

¹⁹ *M.B.*, Docket No. 20-1407 (issued May 25, 2022).

As the Board finds that appellant has not established a compensable employment factor, it is not necessary to consider the medical evidence of record.²⁰

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 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 November 1, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 5, 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

²⁰ See *K.K.*, Docket No. 23-0545 (issued December 11, 2024); *B.O.*, Docket No. 17-1986 (issued January 18, 2019) (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).