United States Department of Labor
Employees' Compensation Appeals Board

L.G., Appellant	)	
and	)	
DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, TAXPAYER ASSISTANCE CENTER, Newark, NJ, Employer	)	**Docket No. 23-0736** **Issued: June 10, 2025**

Appearances:
Stephanie Leet, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On April 27, 2023 appellant, through counsel, filed a timely appeal from a November 28, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (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 condition in the performance of duty, as alleged.

FACTUAL HISTORY

On March 9, 2022 appellant, then a 54-year-old revenue officer (RO), filed an occupational disease claim (Form CA-2) alleging that she sustained post-traumatic stress disorder (PTSD) due to factors of her federal employment. Specifically, she alleged that in August 2020, during the COVID-19 maximum telework posture, managers required her to report to the office even though she was considered "high-risk." Appellant noted that she first became aware of her claimed condition and realized its relation to her federal employment on March 2, 2022.[3] On the reverse side of the claim form, appellant's supervisor, G.B., controverted the claim, asserting that, per the "COVID-19, POD evacuation order, the RO of Day Mail Plan is voluntary. I discussed with [appellant] by phone and alleviated any of her concerns. She, verbally agreed to work as [RO] of the day. She never brought up the issue again of going into the office, and if she requested not to go in due to her health concerns it would have been granted."

In a March 31, 2022 development letter, OWCP informed 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. OWCP afforded appellant 30 days to respond.

In an April 26, 2022 response to OWCP's development questionnaire, appellant continued to assert that she was required to report to the office one to two times a week for three to six hours per day during the period August 21, 2020 through January 31, 2022, even though she was in a high-risk group due to morbid obesity. She explained that she had teleworked full time since March 16, 2020, due to the COVID-19 pandemic maximum telework posture. On July 29, 2020, while G.B. was on leave, P.M., a manager for a different group, informed RO staff that management had discovered that taxpayer mail with returns and checks had not been processed since March 2020, and therefore all ROs would have to report to the office to process this mail, pursuant to a calendar. However, staff members in high-risk groups would not be required to report to the office. P.M. instructed staff to inform their group manager of their specific medical condition/high-risk category.

On August 3, 2020, appellant did not report to the office as scheduled. She notified the acting managers that she was in a high-risk category and would not be in the office on August 3 and 5, 2020. Appellant informed P.M. that she was in a high-risk category and that she would speak with G.B. about it when he returned. She acknowledged that, on that same date, E.S., an acting manager, informed her that, "if you are considered high-risk you are not obligated to come to the office. If you plan on coming in Wednesday, let me know. Otherwise, you can talk with [G.B.] about it next week." Appellant replied that she would let him know if she was able to be in the office on August 5, 2020. On August 5, 2020, she reported to the office as scheduled.

[3] OWCP assigned the present claim OWCP File No. xxxxxx866. It had previously accepted a traumatic injury claim for PTSD under OWCP File No. xxxxxx555 due to appellant being trapped in an elevator while in the performance of duty on August 15, 2005.

Appellant asserted in her statement that she went in because did not wish to discuss her high-risk category of morbid obesity with acting managers or the group secretary.

On August 12, 2020, following his return from leave, appellant's direct manager, G.B., instructed her to report to the office, as another RO could not be in as scheduled. She informed G.B. that she was in a high-risk category and that she did not want to discuss her "morbid obesity" with the acting managers, group secretary or P.M., so she went into the office on August 5, 2020. However, she did not want to risk contracting COVID-19, so she would not be reporting to the office again. She recounted that G.B. assured her that the office was safe, noting that only two people would be there and that they would socially distance six feet apart. Appellant suggested alternative solutions, but G.B. insisted that she was required to come into the office. He also reminded her that if her deadlines were missed, her performance appraisal would be affected. Appellant related that she cried and felt defeated. Because she feared retaliation, she reported to the office on all required dates for the following 19 months.

Appellant further alleged that offices were not properly sanitized and that there were many COVID-19 infections over the prior 24 months. On a day when appellant was assigned to the office, it was sanitized while she was there, and she had a negative reaction to the cleaning agent. She completed her work and left the office.

In support of her claim, appellant submitted printouts of e-mails between herself and supervisors and managers for this period regarding her participation in the RO of the day program.

By decision dated May 12, 2022, OWCP denied appellant's emotional condition claim, finding that the evidence of record was insufficient to establish that her supervisor forced her to report to the office during the August 2020 COVID-19 office evacuation.

On June 9, 2022, appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on October 5, 2022.

OWCP subsequently received a copy of a grievance memorandum dated March 7, 2022, wherein the employing establishment related that:

> "Regarding [appellant's] presence in the post of duty during the evacuation order due to COVID-19, it has been voluntary. The [RO] of the Day calendar was established so that only one Revenue Officer was in at a time, either for a morning or afternoon shift. When the [general manager] explained this to [appellant], she agreed to go in. If [appellant] had stated at any time she did not want to go to the office for health concerns, her request would have been granted. Per the [general manager], there were two (2) other employees under his supervision that did not go into the office regularly due to health concerns. When [appellant] was removed from the [revenue officer] of the day duties it was to relieve her of the responsibility of posting other employees remittances so as to concentrate on her own work. When she was removed, [appellant] actually inquired to the [general manager] as to why she was not on the calendar any longer."

By decision dated November 28, 2022, OWCP's hearing representative affirmed the May 12, 2022 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] 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 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.[5] 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.[6]

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.[7]

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.[8] 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.[9]

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than regular or specially assigned work duties of the employee and are not covered under FECA.[10] Where the evidence demonstrates

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[4] *Supra* note 2.

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

[6] 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).

[7] *See 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).

[8] *A.M.*, Docket No. 21-0420 (issued August 26, 2021); *A.C.*, Docket No. 18-0507 (issued November 26, 2018); *Pamela D. Casey*, 57 ECAB 260, 263 (2005); *Lillian Cutler*, 28 ECAB 125 (1976).

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

[10] *C.V.*, Docket No. 18-0580 (issued September 17, 2018).

that the employing establishment either erred or acted abusively in discharging its administrative or personnel responsibilities, such action will be considered a compensable employment factor.[11]

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.[12] Mere perceptions of harassment are not compensable under FECA. A claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.

ANALYSIS

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

As appellant alleged that she sustained a work-related emotional/stress-related condition, the Board must initially determine whether she has established a compensable employment factor under FECA. The Board notes that her allegations do not directly relate to her regular or specially assigned duties pursuant to *Lillian Cutler*.[13] Rather, appellant has alleged that the employing establishment committed error and abuse with respect to administrative/personnel matters.

Specifically, appellant alleged that management required her to report to the office during COVID-19 maximum telework posture, even though she was considered high-risk. The evidence of record establishes that employing establishment required only one RO to be in the office at a time, pursuant to a shared calendar. On August 3, 2020, appellant notified the acting managers that she was in a high-risk category and would not be in the office on August 3 and 5, 2020. E.S., however, responded that, "if you are considered high-risk you are not obligated to come to the office...." On August 5, 2020, appellant reported to the office as scheduled. While she asserts that G.B. insisted that she was required to come into the office despite her being in a high-risk category, and that she feared retaliation, there is no evidence of record substantiating her assertions. Rather, appellant voluntarily reported to the office on all required dates for the following 19 months. The employing establishment contended on the reverse side of the claim form and in the March 7, 2022 grievance memorandum that, per the COVID-19 maximum telework posture, the RO of Day Mail Plan was voluntary and that if she requested not to go in due to her health concerns it would have been granted. The Board has held that mere dislike or disagreement with certain supervisory actions will not be compensable absent error or abuse on the part of the supervisor.[14] The evidence of record, therefore, is insufficient to establish error or abuse on behalf of the employing establishment in this regard.

[11] *Id.*

[12] *A.F.,* Docket No. 24-0952 (issued December 13, 2024); *S.B.,* Docket No. 18-1113 (issued February 21, 2019).

[13] *Supra* note 8.

[14] *T.C.*, Docket No. 16-0755 (issued December 13, 2016).

Appellant has also alleged that the employing establishment did not follow proper procedures in sanitizing employing establishment premises. However, appellant likewise has not provided evidence to substantiate this allegation. The evidence of record therefore does not establish error or abuse on behalf of the employing establishment in this regard.

As the evidence of record is insufficient to establish an emotional condition sustained in the performance of duty, as alleged, the Board finds that appellant has not met her burden of proof. As the Board finds that appellant has not established a compensable employment factor, it is not necessary to consider the medical evidence of record.[15]

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 condition sustained in the performance of duty, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the November 28, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 10, 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

[15] *See B.O.*, Docket No. 17-1986 (issued January 18, 2019); *Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).