

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

C.C., Appellant)
and) Docket No. 25-0573
U.S. POSTAL SERVICE, SANTA CLARITA)
PROCESSING & DISTRIBUTION CENTER,)
Santa Clarita, CA, Employer)

)

Appearances:

Karen M. Hertz, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge

JANICE B. ASKIN, Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 5, 2025 appellant, through counsel, filed a timely appeal from a February 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.³

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.*

³ The Board notes that, following the issuance of OWCP's February 26, 2025 decision, appellant submitted new 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.*

ISSUE

The issue is whether appellant has met her burden of proof to establish an emotional condition in the performance of duty on November 16, 2024, as alleged.

FACTUAL HISTORY

On December 12, 2024 appellant, then a 32-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on November 16, 2024 she experienced frequent anxiety attacks and constant fear as a result of being previously sexually assaulted while in the performance of duty. She noted that she could not leave her car because she felt unsafe. Appellant stopped work on November 16, 2024, and returned to work on November 21, 2024. On the reverse side of the claim form, V.B., Tour 1 supervisor distribution operations, controverted the claim, contending that appellant had submitted no evidence to establish that she was ever sexually harassed at work. The supervisor contended that the accused coworker had 20-plus years of impeccable service. V.B. noted that appellant was the first employee to ever make such a claim. The supervisor maintained that appellant's emotional reaction on November 16, 2024 was due to a personal, nonwork-related issue.

In development letters dated December 17, 2024, OWCP informed appellant of the deficiencies of her traumatic injury claim. It advised her of the type of factual and medical evidence necessary to establish her claim and provided a questionnaire for her completion. OWCP afforded appellant 60 days to submit the necessary evidence. In separate development letters of even date, it requested that the employing establishment provide additional information, including comments from a knowledgeable supervisor regarding the accuracy of appellant's statements. OWCP afforded the employing establishment 30 days to submit the necessary evidence.

On January 4, 2025 appellant submitted an incomplete OWCP development questionnaire.

Appellant also submitted a November 16, 2024 medical report wherein Dr. Roger C. Wallace, a physician Board-certified in emergency medicine, diagnosed hyperventilation syndrome and panic attack, and addressed appellant's treatment plan.

Additionally, appellant submitted a report information and Victims' Bill of Rights from the Los Angeles sheriff's station in Santa Clarita, California, indicating that a battery incident had been reported on November 16, 2024.

In a follow-up development letter dated January 8, 2025, OWCP advised appellant that it had conducted an interim review, and the evidence remained insufficient to establish her claim. It noted that she had 60 days from the December 17, 2024 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.

In an undated narrative statement, appellant indicated that on November 16, 2024 she had a severe panic attack in her car in the parking lot at work. She related that she immediately reported the incident to her supervisors and a coworker. Appellant further related that she was

transported to the emergency room by paramedics. She also noted that prior to her discharge from the emergency room, she made a report to the sheriff and expressed her desire to press charges, however, the sheriff responded that there was not enough evidence to do so, and that camera footage would have to be obtained from her job before she could press charges. Appellant then chose to have her alleged assailant charged with battery.

OWCP, in a follow-up letter dated January 14, 2025, requested that appellant submit additional evidence regarding the alleged November 16, 2024 employment incident. It again noted that she had 60 days from the December 17, 2024 letter to submit the necessary evidence. OWCP again advised that if the evidence was not received during this time, it would issue a decision based on the evidence contained in the record.

In a January 15, 2025 letter, J.W., a distribution operations supervisor, responded to OWCP's December 17, 2024 development letter to the employing establishment, controverting appellant's contention that B.O., her coworker, touched her buttocks on November 16, 2024 while they were both in the performance of duty. He maintained that based on an immediate investigation of the alleged incident by the employing establishment, there was no reasonable evidence to corroborate her allegation. J.W. noted that B.O. was interviewed during the investigation, and he adamantly denied touching appellant on the buttocks or anywhere else. He further noted that there were no witness statements to corroborate either party's position. J.W. indicated that there were mitigating factors and circumstances including that B.O. was a 20-year employee with an impeccable performance and conduct record. He was also well respected among his peers and superiors. J.W. indicated that no other employee had made a complaint against him regarding his display of unacceptable conduct. He related that during appellant's brief five-year employment she had made several complaints, without any evidence or corroborating testimony, regarding other reputable coworkers. J.W. advised that based on these mitigating factors, the employing establishment concluded that appellant's account of the alleged incident was less credible than B.O.'s account. He further advised that the employing establishment was unaware of any animosity between appellant and B.O., whether any charges had been filed against B.O., and whether appellant had any similar disability or symptoms prior to the alleged incident.

In an additional undated narrative statement, appellant provided a timeline of her alleged employment-related sexual assault and subsequent medical treatment. She indicated that on November 15, 2024 B.O. removed work scissors from her back pocket without permission or consent and groped her buttocks while they were at work. Appellant explained that she was hooking equipment up to her mule, when B.O. drove his mule next to hers. He noticed appellant's scissors in her back pocket, said they were cool, and reached into appellant's back pocket to remove the scissors. Appellant felt unsafe around him and reported the alleged incident to her supervisors and an employing establishment human resources manager and spoke to her union representative about it. She claimed that the alleged incident caused her to have an anxiety attack with flashbacks from when she was sexually assaulted as a child. Appellant also reiterated her account of her November 16, 2024 panic attack in the employing establishment parking lot. On November 18, 19, and 20, 2024 she obtained information regarding mental health treatment and sexual assault and attended a counseling session with an Employee Assistant Program counselor. On November 21, 2024 she returned to work feeling nervous and scared when she saw B.O. Appellant continued to experience the same feelings on November 22 and 23, 2024. She did not feel normal until November 24, 2024 when she had no contact with

B.O. On December 10, 2024 appellant was diagnosed with having post-traumatic stress disorder (PTSD), anxiety, and depression.

Appellant submitted a referral order dated December 10, 2024 wherein Dr. Sabera Saklayen, a Board-certified psychiatrist and neurologist, diagnosed PTSD and referred appellant to a therapist.

By decision dated February 26, 2025, OWCP denied appellant's emotional condition claim, finding that the evidence of record was insufficient to establish that the incident(s) occurred, as alleged. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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 of FECA,⁵ 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.⁶ 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.⁷

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.⁸

Workers' compensation law does not apply to 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 nevertheless does 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

⁴ *Supra* note 2.

⁵ *C.B.*, Docket No. 21-1291 (issued April 28, 2022); *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *M.H.*, Docket No. 23-0467 (issued February 21, 2024); *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *T.H.*, Docket No. 18-1736 (issued March 13, 2019); *R.C.*, 59 ECAB 427 (2008).

⁷ *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *T.E.*, Docket No. 18-1595 (issued March 13, 2019); *Delores C. Elyett*, 41 ECAB 992 (1990).

⁸ See *C.C.*, Docket No. 21-0283 (issued July 11, 2022); *S.K.*, Docket No. 18-1648 (issued March 14, 2019); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

compensable.⁹ 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.¹⁰

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish an emotional condition in the performance of duty on November 16, 2024, as alleged.

Appellant alleged that she sustained an emotional condition on November 16, 2024 as a result of being sexually assaulted by B.O., a coworker, on November 15, 2024. Physical contact by a coworker or supervisor can give rise to a compensable work factor, if the incident is established factually to have occurred, as alleged.¹¹

In support of her allegation of assault, appellant submitted a November 16, 2024 document from the Los Angeles sheriff's station indicating that a report was made of a battery incident. However, this evidence failed to provide any corroborative detail, regarding the circumstances, supporting appellant's allegation.¹² Further, appellant has not submitted witness statements or other documentary evidence demonstrating that the alleged sexual assault occurred.¹³ The Board, therefore, finds that appellant's allegation was unsubstantiated, and thus, insufficient to establish a compensable employment factor.¹⁴

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

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish an emotional condition in the performance of duty on November 16, 2024, as alleged.

⁹ *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).

¹⁰ *A.E.*, Docket No. 18-1587 (issued March 13, 2019); *Gregorio E. Conde*, 52 ECAB 410 (2001).

¹¹ *K.M.*, Docket No. 22-1000 (issued November 9, 2022); *Alton L. White*, 42 ECAB 666 (1991) (physical contact a rising in the course of employment, if substantiated by the evidence of record, may constitute a compensable employment factor).

¹² *H.S.*, Docket No. 24-0926 (issued January 10, 2025); *V.H.*, Docket No. 22-0882 (issued June 9, 2023); *K.W.*, Docket No. 20-0832 (issued June 21, 2022).

¹³ See *E.C.*, Docket No. 25-0376 (issued April 21, 2025); *T.B.*, Docket No. 25-0018 (issued November 4, 2024); *H.S.*, Docket No. 24-0375 (issued July 31, 2024).

¹⁴ *Id.*

¹⁵ See *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).

ORDER

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

Issued: June 17, 2025
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board