

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met his burden of proof to establish an emotional/stress-related condition in the performance of duty on March 13, 2023, as alleged.

FACTUAL HISTORY

On April 26, 2023, appellant, then a 46-year-old medical clerk, filed a traumatic injury claim (Form CA-1) alleging that on March 13, 2023 he sustained an emotional condition when he was “publicly verbally/mentally berated” by C.G., the employing establishment’s chief medical officer, while in the performance of duty. He stopped work on the date of the claimed injury.³ On the reverse side of the form, P.J., his immediate supervisor, indicated that the employing establishment would challenge the claim.

Appellant submitted a March 13, 2023 work excuse note wherein Bertha Kennedy, a nurse practitioner, indicated that appellant was seen on that date “after a work-related incident that has triggered his symptoms of anxiety.” Ms. Kennedy recommended that he take leave for the rest of the day and return to work “at a later time.”

In a May 3, 2023 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 60 days to submit the necessary evidence.

In a May 31, 2023 follow-up development letter, OWCP advised appellant that it had conducted an interim review and found that the evidence remained insufficient to establish the factual circumstances of his claim. It noted that he had 60 days from the May 3, 2023 letter to submit the requested supporting 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 a June 1, 2023 letter, P.J. advised that on the morning of March 13, 2023 she received an e-mail from C.G., which indicated that workplace lights had been turned off again and that he had turned them back on. C.G. further noted in the e-mail that the medical center director had mandated that the lights must remain on. P.J. advised that, immediately after receiving C.G.’s e-mail, she went upstairs and asked who turned the lights off, but no one would admit to doing so. She noted that appellant then replied that C.G. was not his supervisor and she then advised him that the lights were to remain on. In a June 5, 2023 letter, the employing establishment advised that it was challenging appellant’s emotional condition claim.

The employing establishment submitted several e-mails and other documents to OWCP. In a February 14, 2023 report of contact, P.J. indicated that she received an e-mail from C.G. on that date advising that appellant was not wearing a correct mask in accordance with employing establishment guidelines. She went to appellant’s office to counsel him about this and other

³ Appellant was removed from the employing establishment effective August 2, 2024.

matters. The case record also contains two February 14, 2023 e-mails regarding this matter from C.G. to other managers.

In a March 10, 2023 report of contact, C.G. indicated that, on that date, the lights were off when he went into the MAS clerk area and that he then turned the lights on. He advised that, after he left the area, appellant stood up and turned off the lights. C.G. noted that, as appellant was passing by his desk, he asked him to leave the lights on as having the lights off was not appropriate because patients had reported that they could not tell if the area was open for service. He advised that appellant said that the director told him to leave the lights off. C.G. advised appellant that until he received written documentation, the lights were to remain on during normal office hours. He noted that appellant "said he would not and the lights were to remain off."

The case record contains several e-mails from C.G. to other managers, including a March 10, 2023 e-mail in which C.G. indicated that he spoke to appellant after he turned off the lights in the MAS clerk area and that appellant claimed that "this was per the director." He indicated that this was not true and stated that appellant was "out of line in turning off the lights." In another March 10, 2023 e-mail, C.G. noted that appellant failed to be compliant with the lights and turned them off. He indicated that appellant lied and said that the director instructed him to leave them off. C.G. advised that this was a patient satisfaction issue and that veterans did not know the area was open. He also sent a March 10, 2023 e-mail to other managers, as well as appellant and T.N., a coworker, in which he indicated that veterans could not see whether the MAS clerk area was open when the lights were turned off and became confused about where to check out. Appellant sent a responding e-mail on March 10, 2023, noting his status as a union representative, wherein he indicated that the director told him that she had ordered blinds to reduce light coming into the second floor from outside the building.

In a March 10, 2023 report of contact, P.J. indicated that on March 10, 2023 she received an e-mail from C.G. explaining that the lights on the second floor were turned off and that patients could not see if the clerks were there to check them in. C.G. stated in the e-mail that he turned the lights on and told the MAS clerks that, per the director, the lights were to remain on. P.J. indicated that C.G. further related in the e-mail that appellant said he did not receive an e-mail on the matter from the director, but that he observed that appellant had lied because he had, in fact, responded to the e-mail. She indicated that she then spoke to the MAS clerks and told them in a direct order, per the director, that the lights were to remain on. P.J. indicated that appellant told her that he would leave the lights on and stated that C.G. was rude to him. She advised that she received another e-mail in which C.G. indicated that appellant had turned the lights off again. Appellant denied turning the lights off and said that another MAS clerk had done so.

In a March 13, 2023 report of contact, P.J. advised that, on that date, she received an e-mail from C.G. that the lights were off again and that he turned them back on and told the MAS clerks that the director indicated that the lights must remain on. She advised that she immediately went upstairs and asked who turned the lights off, but no one would admit to turning them off. Appellant replied that C.G. turned the lights on and that "he can't stand that man." P.J. indicated that she told appellant that the lights were to remain on. She noted that she later learned that appellant had gone to the employing establishment's mental health unit.

Appellant submitted a June 30, 2023 attending physician's report (Form CA-20), wherein Dr. Seth L. Strauss, a Board-certified psychiatrist, listed a March 13, 2023 date of injury and diagnosed exacerbation of generalized anxiety disorder.

By decision dated July 12, 2023, OWCP denied appellant's claim, finding that he had not met his burden of proof to establish an emotional/stress-related condition in the performance of duty on March 13, 2023 as he had not established a compensable employment factor. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

In an October 5, 2023 statement, I.S., a coworker, indicated that on March 13, 2023 C.G. went to room 2C101 on the second floor to turn on the lights. He noted that immediately after C.G. left the room, another clerk turned the lights back off. I.S. asserted that C.G. accused appellant of turning off the lights because he was a union staff member. He noted that C.G. had "a few words" with appellant in front of MAS clerks and asserted that C.G., was "rude, very condescending, and unbecoming of a federal employee" towards appellant and T.N., who also was a union staff member. Appellant told C.G. that the lights were being handled with the director and C.G. "did not like that [response] and turned the lights back on to retaliate."

In a December 1, 2023 statement, T.N., indicated that, on March 13, 2023, C.G. entered the MAS clerk area and turned the lights on. C.G. then "shouted numerous statements" and yelled in an aggressive loud manner, "There's an e[-]mail from the director, did you read it?" T.N. indicated that after no response was received, C.G. yelled, "Do you hear me?" several times. Appellant then responded, "No, I do not hear you, but it will be addressed." T.N. indicated that C.G. then shouted, "Well, I'm sorry you didn't hear me and maybe you need to get your hearing checked but these lights better not go back off." Appellant then stated to C.G. that if he wanted to speak with him about this matter that they could do so, but this was not the appropriate time nor place. T.N. indicated that C.G. "rudely disagreed and said that this is the place for that." Appellant then stated that he did not cut off the lights and that "this is not the place for this discussion." T.N. indicated that C.G. stated in an extremely loud tone that it was the right place to discuss the matter and indicated that he was "saying it loud so everyone could hear, and the lights better not be cut back off!" She noted that C.G. "continued to harass [appellant] in front of everyone upstairs" including patients. T.N. advised that as appellant turned to address C.G., she waved her hand towards appellant, and stated, "Um, um, this is not the time nor place for that." She indicated that C.G. continued to scream and stated, "If I said it is, then it is! And there's nothing disrespectful with what I'm doing." T.N. generally claimed that C.G. had been allowed "to threaten and fabricate narratives on the clerks, particularly [appellant] and myself."

On December 6, 2023, OWCP received an undated statement in which appellant discussed his claim for a work-related emotional condition. Appellant asserted that "the supervisor response" was falsified by his direct line supervisor and/or MAS management, and that he never had been verbally counseled or disciplined by P.W., a manager. He described the medical treatment for his claimed injury and advised that prior to this injury he had been diagnosed with general anxiety disorder, depression, and post-traumatic stress disorder (PTSD).

On December 6, 2023, appellant requested reconsideration of the July 12, 2023 decision. Appellant's then-representative provided a December 6, 2023 statement in which he argued that

appellant's claim should be accepted. He asserted that the witness statements of record demonstrated that on March 13, 2023 management mishandled the matter of the lights being turned off.

By decision dated February 9, 2024, OWCP denied modification of its July 12, 2023 decision.

In a March 7, 2024 letter, T.L., an employing establishment human resources supervisor, argued that appellant had not established his claim for a work-related emotional condition. She discussed the evidence of record, including the witness statements of I.S. and T.N., and asserted that they did not establish wrongdoing by management.

In a March 7, 2024 statement, P.J. discussed appellant's claim for a work-related emotional condition. She provided an account of the events of March 13, 2023, which was similar to her prior statements of record. P.J. discussed the e-mails that C.G. sent to her on March 13, 2023 regarding the lights being turned off in the MAS clerk area and indicated that she instructed appellant on that date to keep them turned on. In a March 7, 2024 statement, C.G. also discussed appellant's claim for a work-related emotional condition and provided an account of the events of March 13, 2023, which was similar to his prior statements of record. He indicated that he personally witnessed appellant turn off the lights in the MAS clerk area and denied that he verbally abused him on March 13, 2023.

On October 8, 2024, appellant, through counsel, requested reconsideration of OWCP's February 9, 2023 decision. In an October 8, 2024 letter, counsel argued that the witness statements of I.S. and T.N. established that a "confrontational" meeting occurred on March 13, 2023.

Appellant submitted additional medical evidence, including an August 27, 2024 letter wherein Dr. Strauss indicated that he had treated appellant for aggravation of PTSD, anxiety, and panic disorder. Dr. Strauss asserted that C.G.'s "rude behavior" on March 13, 2024 aggravated appellant's preexisting PTSD, anxiety, and panic disorder.

By decision dated January 6, 2025, OWCP denied modification of its February 9, 2024 decision.

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, 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

⁴ 5 U.S.C. § 8101 *et seq.*

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 the regular or specially assigned work duties of the employee and are not covered under FECA.¹⁰ Where, however, 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 employment factor.¹¹

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 *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 *See R.M.*, Docket No. 19-1088 (issued November 17, 2020); *Thomas D. McEuen*, 41 ECAB 387 (1990); *reaff'd on recon.*, 42 ECAB 556 (1991).

¹¹ *L.R.*, Docket No. 23-0925 (issued June 20, 2024); *M.A.*, Docket No. 19-1017 (issued December 4, 2019).

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.¹³

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish an emotional/stress-related condition in the performance of duty on March 13, 2023, as alleged.

Appellant alleged that he sustained a work-related emotional condition and, therefore, the Board must initially review whether the alleged incidents and conditions are compensable employment factors under the terms of FECA.¹⁴ The Board notes that appellant's claim does not directly relate to his regular or specially assigned duties under *Lillian Cutler*.¹⁵ Rather, appellant claimed that management committed error and abuse with respect to an administrative/personnel matter.

As noted above, the Board has held that 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.¹⁶ However, the Board has also 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.¹⁷ 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.¹⁸

Appellant claimed that on March 13, 2023 management officials, including C.G., mishandled the matter of lights being turned off in the MAS clerk area. Appellant submitted coworker witness statements from I.S. and T.N. concerning his interaction and conversations with C.G. regarding the turned-off lights in the MAS clerk area. However, the Board has held that a raised voice in the course of a conversation does not, in and of itself, warrant a finding of verbal abuse.¹⁹ Furthermore, while appellant expressed dissatisfaction with the actions of his superiors, the Board has held that mere dislike or disagreement with certain supervisory actions will not be

¹² See *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).

¹³ *Id.*

¹⁴ *Y.W.*, Docket No. 19-1877 (issued April 30, 2020); *Dennis J. Balogh*, 52 ECAB 232 (2001).

¹⁵ See *Lillian Cutler*, *supra* note 8.

¹⁶ *T.L.*, Docket No. 18-0100 (issued June 20, 2019); *Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

¹⁷ *M.S.*, Docket No. 19-1589 (issued October 7, 2020); *William H. Fortner*, 49 ECAB 324 (1998).

¹⁸ *J.W.*, Docket No. 17-0999 (issued September 4, 2018); *Ruth S. Johnson*, 46 ECAB 237 (1994).

¹⁹ See *R.L.*, Docket No. 17-0883 (issued May 21, 2018).

compensable absent error or abuse on the part of the supervisor.²⁰ Appellant has not substantiated error or abuse committed by the employing establishment in the above-noted matter on March 13, 2023 and, therefore, he has not established a compensable employment factor with respect to administrative or personnel matters.

As the Board finds that appellant has not established a compensable employment factor, it is not necessary to consider the medical evidence of record.²¹

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 his burden of proof to establish an emotional/stress-related condition in the performance of duty on March 13, 2023, as alleged.

²⁰ *T.C.*, Docket No. 16-0755 (issued December 13, 2016).

²¹ *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 January 6, 2025 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 4, 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