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<b>J.A., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 25-0237</b>
	)	<b>Issued: May 14, 2025</b>
<b>DEPARTMENT OF VETERANS AFFAIRS,</b>	)	
<b>BROOKLYN VA MEDICAL CENTER,</b>	)	
<b>Brooklyn, NY, Employer</b>	)	
	)	

*Stephen C. Larkin*, for the appellant<sup>1</sup>  
*Office of Solicitor*, for the Director

## DECISION AND ORDER

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

## JURISDICTION

On January 20, 2025 appellant, through her representative, filed a timely appeal from an October 21, 2024 decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>3</sup>

<sup>1</sup> 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 an 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.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> The Board notes that, following the October 21, 2024 decision, appellant submitted additional evidence on appeal to the Board. However, the Board's *Rules of Procedures* 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/stress-related condition in the performance of duty, as alleged.

## **FACTUAL HISTORY**

This case has previously been before the Board.<sup>4</sup> The facts and circumstances of the case as set forth in the Board's prior order are incorporated herein by reference. The relevant facts are as follows.

On August 7, 2020 appellant, then a 61-year-old nursing assistant, filed an occupational disease claim (Form CA-2) alleging that she sustained anxiety, nervousness, tightness in her chest, heart palpitations, and post-traumatic stress disorder (PTSD) due to factors of her federal employment. She noted that she first became aware of her condition on July 17, 2020, and realized its relation to her federal employment on July 20, 2020. Appellant stopped work on July 17, 2020. On the reverse side of the claim form, D.G., appellant's first-line supervisor, asserted that on July 17, 2020 appellant reported that "she wasn't feeling well (jaw pain)." D.G. escorted appellant to the employee health unit, where she was evaluated. Appellant was "[h]ypertensive and tachycardic so she [was] brought to the [emergency room] for further medical evaluation."<sup>5</sup>

In reports dated from July 23, 2010 through April 20, 2012, Dr. Philip A. Saigh, a clinical psychologist, opined that visiting the locked ward where the accepted assault occurred exacerbated appellant's PTSD and anxiety.

In a July 17, 2020 report, Dr. Nausika Prifti, an osteopath Board-certified in psychiatry, recounted that appellant attributed her anxiety to her recent reassignment to a 15<sup>th</sup> floor mental health unit, where she had been physically assaulted by a patient many years previously. She had "struggled with PTSD for many years" and had undergone mental health treatment. After the employing establishment recently reassigned appellant to the unit where the assault occurred,<sup>6</sup> she experienced an exacerbation of symptoms, including insomnia, severe and frequent nightmares, anxiety, panic attacks, fearing for her life, hypervigilance, depression, nervousness, and elevated blood pressure. On examination, Dr. Prifti observed an anxious, dysphoric, and depressed mood with blunted affect. She diagnosed chronic, severe, PTSD. Dr. Prifti prescribed medication.

In a development letter dated August 11, 2020, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence necessary to establish her claim and provided a questionnaire for her completion. In a separate development

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<sup>4</sup> *Order Remanding Case*, Docket No. 23-0321 (issued December 28, 2023).

<sup>5</sup> Previously, appellant had filed a traumatic injury claim (Form CA-1) for injuries sustained on March 7, 2000, when she was assaulted by a combative patient. OWCP assigned the claim OWCP File No. xxxxxx216. It accepted the claim for post-concussion syndrome. Additionally, on October 4, 2001 appellant filed a Form CA-2 alleging that she sustained an emotional condition on or before March 1, 2001 due to factors of her federal employment, including the March 7, 2000 assault. OWCP assigned the claim OWCP File No. xxxxxx353. It accepted the claim for PTSD.

<sup>6</sup> OWCP received a March 29, 2020 notification of personnel action (Standard Form (SF) 50) noting appellant's temporary reassignment, and a copy of appellant's official position description.

letter of even date, OWCP requested that the employing establishment provide additional information regarding appellant's alleged injury, including comments from a knowledgeable supervisor regarding the accuracy of her allegations and an explanation of any areas of disagreement. It afforded both parties 30 days to submit the requested evidence.

On August 11, 2020 the employing establishment responded that on July 17, 2020 appellant presented to the author's office "stating she did not feel well, she complained of jaw pain." The author escorted appellant to the employee health unit, "where it was noted she was hypertensive and tachycardic." The author disagreed with appellant's allegations as appellant "had expressed she was not able to perform her duties" and was advised to apply for reasonable accommodation." The author indicated that there were no aspects of appellant's job that could be perceived as stressful, but that appellant had informed the writer that she could no longer take vital signs or temperatures at the door because these duties were stressful. The author noted that there were no employing establishment employees with additional information on appellant's allegations.

In response, appellant submitted reports dated October 1 and November 14, 2001 by Dr. Herbert H. Stein, a Board-certified psychiatrist. Dr. Stein recounted a history of appellant having sustained severe head injuries approximately one year previously when assaulted by a patient in a 15<sup>th</sup> floor psychiatric unit.<sup>7</sup> Appellant had lost her sense of smell and experienced continuing gait disturbance. Dr. Stein noted that when a psychiatric patient threatened appellant in September 2001 on the unit where the assault had occurred, this stressor "provoked a more acute exacerbation of symptoms which are related to reexperiencing the trauma of a year ago in which she was assaulted." He therefore opined that appellant's PTSD was work related. Dr. Stein diagnosed PTSD, acute, with delayed onset. He prescribed medication and psychotherapy.

OWCP also received chart notes dated from December 16, 2001 through June 11, 2003 by Joanne Izzo, a social worker.

In a July 19, 2020 report, Dr. Stein noted a recurrence of anxiety/PTSD symptoms related to the 2001 employment incident. Appellant had been doing well when assigned to the employing establishment's clubhouse, but experienced symptoms, anxiety, heaviness in her chest, and sleep problems since being approached about working in the inpatient units. Dr. Stein prescribed medication.

In statements dated August 21, 2020, appellant explained that in 2000, she had been attacked by a patient in the 15 East unit and sustained head injuries. After a patient in the 15 West unit verbally threatened her in 2001, she experienced nightmares and flashbacks of the 2000 attack. Appellant alleged that in 2003, she had also been threatened by patients in a Methadone clinic. The employing establishment removed her from the clinic. Appellant also identified a 2012 incident where a patient falsely accused her of harassment. She alleged that on July 17, 2020, while performing hourly rounds on the 15 West inpatient unit, a patient became belligerent when she asked for his name. Appellant experienced anxiety, a sensation of heaviness in her chest, and memories of the 2000 assault and head injury. She reported a similar event to D.G., who responded that "[t]hose are some of the patients we will get sometimes." Appellant asserted that the July 17,

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<sup>7</sup> See *supra* note 5.

2020 incident and previous events on the same unit contributed to her illness, which had been manageable when she had been assigned to the 16 West outpatient unit, but had worsened while working in the 15 West inpatient unit.

By decision dated October 29, 2020, OWCP denied appellant's claim for an employment-related emotional/stress-related condition, finding that the evidence of record was insufficient to establish that the injury and/or events occurred, as alleged. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On November 23, 2020, appellant requested reconsideration.

OWCP subsequently received an October 20, 2020 report wherein Dr. Eugenia Steingold, a clinical psychologist, noted evaluating appellant on October 1 and 15, 2020 for late onset acute PTSD. She related a history of appellant's assault. Dr. Steingold opined that appellant's recent transfer to the mental health floor where the assault occurred had retraumatized her. A patient recently became rude and spoke to her in a very loud voice, triggering symptoms of PTSD. Dr. Steingold observed that appellant shook in fear and cried when speaking about the assault, as well as the recent incident that retraumatized her. She explained that it would be detrimental to appellant's mental health if she returned to work in the psychiatric unit. Dr. Steingold diagnosed acute, severe PTSD. She held appellant off work due to the extreme severity of her symptoms.

By decision dated January 12, 2021, OWCP denied modification of the October 29, 2020 decision.

On March 16, 2021, appellant requested reconsideration.

In a June 12, 2020 e-mail, D.G. noted that during the following week, appellant would be assigned to the back door from 8:00 a.m. to 10:00 a.m. and then from 11:00 a.m. to 1:00 p.m., with the remainder of the shift on 15 West. She advised appellant that if she could not perform the two sessions at the back door, she would remain on 15 West for the rest of her shifts Monday through Friday. D.G. acknowledged that appellant had stated that she could not work full time on 15 West when the unit reopened and that she could not participate in training for blood draws and electrocardiograms (EKG). She provided appellant contact information for I.H., an employing establishment human resources specialist.

In a June 16, 2020 e-mail, I.H. noted forwarding appellant's reasonable accommodation request to a regional reasonable accommodation coordinator, and instructed appellant to contact the regional coordinator directly.

In a June 19, 2020, written confirmation of request for accommodation, appellant requested not to be placed in any mental health or substance abuse unit or in a position where she would be required to lift or bend. She explained that she could not work or function in an environment with physical and verbal abuse. Appellant noted that she had PTSD and a spinal condition that prevented her from lifting more than 20 pounds.

OWCP received a November 12, 2020 statement, wherein M.G., a social worker and employing establishment Employee Assistant Program (EAP) counselor, noted that appellant first

developed PTSD following a workplace assault approximately 19 years previously. Her symptoms recurred when appellant was reassigned to the unit where the assault occurred.

In a February 13, 2021 report, Dr. Nidhiry Thriesiamma, a Board-certified psychiatrist, noted treating appellant for a July 17, 2020 employment incident. She diagnosed PTSD and prescribed medication.

In a February 26, 2021 statement, appellant noted that she had been transferred to 15 West in March 2020. Following the transfer, she sought a new assignment to avoid a relapse as she had been doing well on the 16 West unit in a different environment. Appellant alleged that she informed supervisor D.G. that she could not work on 15 West, consulted the EAP for help, and requested reasonable accommodation. On July 20, 2020 she awoke with severe anxiety, forgot to call in sick, and was charged with absence without leave (AWOL). Appellant called in sick on July 21, 2020 and had remained off work.<sup>8</sup>

By decision dated April 28, 2021, OWCP denied modification of the prior decision.

On April 27, 2022, appellant, through her representative, requested reconsideration and submitted additional evidence.

In reports dated March 8, 2021 through April 27, 2022, Dr. Steingold diagnosed PTSD. She noted that appellant had been returned to the 15 West unit approximately one year prior to the July 17, 2020 employment incident where a patient “screamed at her violently” and attempted to strike her. Appellant attempted to notify management that she was not to be assigned to 15 West or to work with patients who required searches or restraint, but her concerns were not addressed. Dr. Steingold requested that appellant not be placed “in the environment of her original trauma or job functions (*e.g.* hourly rounds, escorting patients, searching patient’s belongings, mental health/substance abuse unit), as it is highly likely to retraumatize her and exacerbate her symptoms.”

By decision dated July 21, 2022, OWCP denied appellant’s request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

Appellant, through her representative, filed an appeal to the Board. By order dated December 28, 2023,<sup>9</sup> the Board set aside OWCP’s July 21, 2022 decision and remanded the case for OWCP to administratively combine appellant’s claims under OWCP File Nos. xxxxxx216, xxxxxx353, and xxxxxx734, to be followed by a *de novo* decision.

On February 7, 2024, OWCP administratively combined appellant’s claims under OWCP File Nos. xxxxxx734, xxxxxx216, and xxxxxx353, with OWCP File No. xxxxxx734 designated as the master file.

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<sup>8</sup> An employing establishment earnings and leave report listed eight hours AWOL on June 20, 2020, and eight hours sick leave each day from July 21 through 23, 2020.

<sup>9</sup> *Supra* note 4.

By *de novo* decision dated March 26, 2024, OWCP again denied appellant's emotional/stress-related condition claim. It found that she had not established any compensable factors of her federal employment and thus the requirements had not been met to establish an injury in the performance of duty as defined by FECA.

On April 19, 2024, appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

A hearing was held on August 7, 2024. Appellant attributed the claimed emotional/stress-related conditions, in part, to being reassigned to the 15 West inpatient unit in March 2020, where she had been assaulted in 2000.

In an August 19, 2024 statement, appellant asserted that she reported the July 17, 2020 incident immediately to D.G., who escorted her to a health unit.

In an August 28, 2024 statement, appellant contended that on July 17, 2020 she did not complain of jaw pain to D.G., and that the denial of her reasonable accommodation request not to work in the 15 West unit was an administrative error.

OWCP subsequently received an October 6, 2020 e-mail to appellant from D.G., advising that her request for reasonable accommodation had "been granted for six months not to lift 20 pounds." She would continue to work on 15 West. Appellant responded to D.G. in an October 7, 2020 e-mail, wherein she clarified that her "request for reasonable accommodation [was] to be removed from 15 West inpatients unit" or other mental health or substance abuse units.

In an October 7, 2020 e-mail, R.N., an employing establishment human resources specialist, advised D.G. that appellant had modified her request for reasonable accommodation and that the modified request was "sufficiently supported by her medical documentation." He indicated that the 15 West unit was a "trigger" for appellant's medical condition and recommended that the accommodation be granted for a one- to two-year period. If D.G. could not accommodate appellant, she would "need to explain why [appellant] cannot be assigned anywhere within the [employing establishment] other than 15 W[est]." D.G. responded that she needed to discuss the matter with her supervisor.

By decision dated October 21, 2024, OWCP's hearing representative affirmed the March 26, 2024 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>10</sup> 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, 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

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<sup>10</sup> *Supra* note 2.

the employment injury.<sup>11</sup> 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.<sup>12</sup>

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.<sup>13</sup>

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*,<sup>14</sup> the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under FECA.<sup>15</sup> 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.<sup>16</sup> 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.<sup>17</sup>

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.<sup>18</sup> 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

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<sup>11</sup> *A.J.*, Docket No. 18-1116 (issued January 23, 2019); *Gary J. Watling*, 52 ECAB 278 (2001).

<sup>12</sup> 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).

<sup>13</sup> *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).

<sup>14</sup> 28 ECAB 125 (1976).

<sup>15</sup> 5 U.S.C. §§ 8101-8193.

<sup>16</sup> *G.R.*, Docket No. 18-0893 (issued November 21, 2018). *Robert W. Johns*, 51 ECAB 136 (1999).

<sup>17</sup> *A.M.*, Docket No. 24-0849 (issued January 31, 2025); *E.F.*, Docket No. 24-0727 (issued October 25, 2024); *D.I.*, Docket No. 19-0534 (issued November 7, 2019); *T.G.*, Docket No. 19-0071 (issued May 28, 2019).

<sup>18</sup> *Charles D. Edwards*, 55 ECAB 258 (2004).

employment factor.<sup>19</sup> 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.<sup>20</sup> A claimant must support his or her allegations with probative and reliable evidence.<sup>21</sup>

OWCP's regulations provide that an employing establishment who has reason to disagree with an aspect of the claimant's allegation should submit a statement that specifically describes the factual argument with which it disagrees and provide evidence or argument to support that position.<sup>22</sup> Its regulations further provide in certain types of claims, such as a stress claim, a statement from the employing establishment is imperative to properly develop and adjudicate the claim.<sup>23</sup>

### ANALYSIS

The Board finds that appellant has met her burden of proof to establish a compensable factor of employment.

Appellant attributed her emotional/stress-related condition, in part to a *Cutler*<sup>24</sup> factor. Specifically, she alleged that she was required to work on the same floor as the psychiatric unit where she had been assaulted on March 7, 2000.<sup>25</sup> 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.<sup>26</sup> The evidence of record demonstrates the challenges that appellant faced when performing her regular assigned duties near the area where she was previously assaulted. The Board thus finds that she has established a compensable work factor under *Cutler*.<sup>27</sup>

As OWCP found that there were no compensable employment factors, it did not analyze or develop the medical evidence. Accordingly, the Board shall remand the case for consideration of the medical evidence with regard to whether appellant has established an emotional/stress-related condition in the performance of duty causally related to the compensable employment

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<sup>19</sup> *Kim Nguyen*, 53 ECAB 127 (2001). *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

<sup>20</sup> *D.P.*, Docket No. 25-0199 (issued February 20, 2025); *B.S.*, Docket No. 19-0378 (issued July 10, 2019); *Ruth S. Johnson*, 46 ECAB 237 (1994).

<sup>21</sup> *D.P.*, *id.*; *T.G.*, Docket No. 19-0071 (issued May 28, 2019); *Marlon Vera*, 54 ECAB 834 (2003).

<sup>22</sup> 20 C.F.R. § 10.117(a); *A.M.*, *supra* note 17; Docket No. 15-0547 (issued May 2, 2016).

<sup>23</sup> Federal (FECA) Procedure Manual, Chapter 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.7a(2) (June 2011) and Part 2 -- Claims, *Fact of Injury*, Chapters 2.803.4a(1)(b) and 2.803.7a (November 2023).

<sup>24</sup> *Supra* note 14.

<sup>25</sup> *Supra* note 5.

<sup>26</sup> *Supra* note 14; *see also K.W.*, Docket No. 22-0877 (issued February 5, 2025).

<sup>27</sup> *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).



factor. After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

**CONCLUSION**

The Board finds that appellant has met her burden of proof to establish a compensable factor of employment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 21, 2024 decision of the Office of Workers' Compensation Programs is reversed. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: May 14, 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