

¹ Under the Board's *Rules of Procedure*, an appeal must be filed within 180 days from the date of the last OWCP decision. 20 C.F.R. § 501.3(e). An appeal is considered filed upon receipt by the Clerk of the Appellate Boards. *Id.* at § 501.3(f). One hundred and eighty days from May 15, 2023, the date of OWCP's latest decision, was Saturday, November 11, 2023. Because the last day of the 180-day filing period fell on a weekend, appellant had until the close of the next business day, Monday, November 13, 2023, to timely file an appeal. *Id.* § 501.3(f)(2). As the Clerk of the Appellate Boards received the appeal on November 13, 2023, the appeal is timely filed. *Id.*

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

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

On March 6, 2023 appellant, then a 41-year-old window clerk, filed an occupational disease claim (Form CA-2) alleging that she developed an emotional/stress-related condition due to years of verbal abuse by L.D., a former postmaster. She noted that she first became aware of her condition on December 22, 2022 and stopped work that day.

In a development letter dated March 14, 2023, 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 60 days to submit the necessary evidence. In a separate letter of even date, it requested that the employing establishment provide comments from a knowledgeable supervisor regarding the accuracy of appellant's allegations. The employing establishment was also asked to provide the names of any agency employees that might have additional information regarding appellant's claim. The employing establishment was afforded 30 days to respond.

In response to OWCP's development questionnaire, appellant submitted an unsigned and undated complaint form to the employing establishment's Office of Inspector General (OIG), which alleged L.D. committed a crime on December 31, 2021; and a February 9, 2023 report of Hazard, Unsafe Condition or Practice form, which alleged that L.D. sent appellant a text message which said in part, "I hate you! You are a horrible person." She also alleged that the text message was the latest in a long string of abuses she was forced to endure. Appellant also submitted copies of text messages to B.D., T.A., C.C., and J.G. which described alleged abuse and appellant's reactions to alleged events.

OWCP received an earnings and leave statement for the pay period December 3 through 16, 2022 which indicated that appellant worked 56.50 hours of overtime, during week 1, and 59.99 hours of overtime during week 2.

On April 4, 2023 OWCP again requested that the employing establishment provide comments from a knowledgeable supervisor regarding appellant's statements.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that, following the May 15, 2023 OWCP decision, it received additional evidence on appeal. 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.*

OWCP received an April 13, 2023 attending physician's report (Form CA-20) and work status notes dated January 6, February 23, and March 23, 2023 from Rebecca Ross, a Board-certified nurse practitioner.

In an April 25, 2023 letter, OWCP informed appellant that the evidence received remained insufficient to support her claim. It requested that she submit the factual and medical evidence requested in its March 14, 2023 development letter, which it attached. OWCP noted that appellant had been afforded 60 days to submit the necessary evidence from its March 14, 2023 letter. It 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.

OWCP received progress notes and an attending physician's report (Form CA-20) from Ms. Ross dated January 26 through April 13, 2023.

In a May 2, 2023 statement, appellant further described the employment-related incidents involving L.D. which she believed contributed to her condition. She alleged that from January 2021 through February 2022 L.D. bullied her daily by making statements to intentionally humiliate her. Appellant also alleged that L.D. would give her direct orders to do a task and when she clocked in the next day, she would verbally reprimand her for doing the task she had directed her to do. Examples provided included telling appellant to transfer stamp stock using L.D.'s credentials then reprimanded appellant for using her credentials, and being ordered to run the office, then reprimanded for working overtime. Appellant alleged that she was not given more than five afternoon rest breaks during her tenure; her coworkers were not held responsible for any of her tasks which were also in their job description; L.D. threatened to take her lunch breaks away on multiple occasions; on January 5, 2022, L.D. ordered appellant to take her rest breaks two minutes after her start time as punishment for reporting her for not giving her breaks. She alleged that this was documented on audio and in her text message to B.D. Appellant alleged that on January 29, 2022, a scheduled day off, L.D. texted her in all capital letters, which scared her, insinuating that she was a bad parent, yelled at her for following postal regulations, and told her that she would be disciplined the following Monday morning. She alleged that on October 31, 2022 L.D. told her she knew that she could not do the job of a postmaster; on December 23, 2022, L.D. threatened to mark her Absent Without Leave (AWOL) when she had direct knowledge from her supervisors that she was on leave under the Family and Medical Leave Act (FMLA) because of her; L.D. withheld close to eight weeks of pay despite her leave balance and had designated the type of leave to use while processing payroll; on February 2, 2023, L.D. texted her stating "You are a horrible person! I hate you!," on April 13, 2023, L.D. called her boss claiming that she had come in after hours and terrorized the mail trucks; on April 19, 2023, L.D. deliberately falsified a report to the Postal Inspection Service alleging that appellant had stolen a gun and threatened to shoot everyone in the office; L.D. told customers appellant was fired for stealing; L.D. and her daughter had been seen driving by her home in attempt to intimidate and harass her, which appellant alleged was done to other coworkers. Appellant indicated that she suffered a panic attack and blacked out when she was told L.D. was returning from nine months of paid administrative leave due to allegations of tampering and theft of postal monies. She indicated that L.D. also abused three coworkers, a neighboring Postmaster, and other coworkers. Appellant indicated that she had filed a grievance, but no final decision had been issued.

Illegible text threads, a timeline, and an April 27, 2023 statement regarding hazardous working conditions, along with emails and a Step 2 grievance appeal form were also submitted.

A May 12, 2023 note from Ms. Ross was also received, indicating dates of treatment, her clinical course of treatment and a series of diagnoses.

By decision dated May 15, 2023, OWCP denied appellant's emotional/stress-related condition claim, finding that she had not established a compensable work factor.

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 timely filed within the applicable time limitation, that an injury was sustained in the performance of duty as alleged, and that any disability or medical 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 upon a traumatic injury or an occupational disease.⁶

To establish an emotional condition in the performance of duty, appellant must submit the following: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to the condition; (2) medical evidence establishing that he or she has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the emotional condition is causally related to the identified compensable employment factors.⁷

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*,⁸ the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under FECA.⁹ 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.¹⁰ 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

⁴ *Supra* note 2.

⁵ *G.W.*, Docket No. 22-1360 (issued May 4, 2023); *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); *G.W.*, *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).

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 28 ECAB 125 (1976).

⁹ *Supra* note 2.

¹⁰ *W.F.*, Docket No. 17-0640 (issued December 7, 2018); *David Apgar*, 57 ECAB 137 (2005); *Robert W. Johns*, 51 ECAB 136 (1999).

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.¹¹

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.¹² 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 employment factor.¹³

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.¹⁴ Mere perceptions of harassment are not compensable under FECA.¹⁵ A claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence.¹⁶ Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.¹⁷

ANALYSIS

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

The Board must initially review whether appellant's allegations constitute compensable employment factors under FECA.¹⁸ Appellant has not attributed her emotional/stress-related

¹¹ *Supra* note 8.

¹² *D.T.*, Docket No. 19-1270 (issued February 4, 2020); *C.V.*, Docket No. 18-0580 (issued September 17, 2018); *Charles D. Edwards*, 55 ECAB 258 (2004).

¹³ *C.V.*, *id.*; *Kim Nguyen*, 53 ECAB 127 (2001). *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

¹⁴ *S.B.*, Docket No. 18-1113 (issued February 21, 2019).

¹⁵ *A.E.*, Docket No. 18-1587 (issued March 13, 2019); *M.D.*, 59 ECAB 211 (2007); *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

¹⁶ *See J.R.*, Docket No. 20-1382 (issued December 30, 2022); *L.J.*, Docket No. 20-0998 (issued December 14, 2022); *S.G.*, Docket No. 22-0495 (issued November 4, 2022); *J.F.*, 59 ECAB 331 (2008); *Robert Breeden*, 57 ECAB 622 (2006).

¹⁷ *L.J. and 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. Jablanski*, 56 ECAB 616 (2005); *Penelope C. Owens*, 54 ECAB 684 (2003).

¹⁸ *P.G.*, Docket No. 25-0555 (issued June 20, 2025); *S.K.*, Docket No. 18-1648 (issued March 14, 2019); *Dennis J. Balogh*, 52 ECAB 232 (2001).

condition to the performance of her regularly or specially assigned duties under *Cutler*.¹⁹ Rather, she has alleged that she sustained an emotional/stress-related condition as a result of a pattern of harassment/discrimination committed by L.D.

Specifically, appellant alleged that from January 2021 through February 2022 L.D. bullied her daily, including yelling at her and making false disparaging statements to intentionally humiliate her. She further alleged that L.D. inappropriately reprimanded her and retaliated against her. Appellant also asserted that L.D. denied her rest and lunch breaks. Finally, she also alleged that L.D. sent inappropriate text messages and drove past her home.

As noted above, 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.²⁰ Appellant has not submitted corroborative evidence, such as witness statements, in support of her allegations of harassment, intimidation, discrimination, and retaliation. Thus, the Board finds that appellant has not established a compensable factor of employment in this regard.²¹

As the Board finds that appellant has not established a compensable employment factor, it is not necessary to consider the medical evidence of record.²²

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 while in the performance of duty, as alleged.

¹⁹ *Supra* note 8.

²⁰ *Supra* note 18.

²¹ *See A.F.*, Docket No. 20-0525 (issued September 14, 2020).

²² *See B.O.*, Docket No. 17-1986 (issued January 18, 2019). *See also Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

ORDER

IT IS HEREBY ORDERED THAT the May 15, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 4, 2026
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