

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

D.G., Appellant)

and)

DEPARTMENT OF VETERANS AFFAIRS,)
GULF COAST VETERANS' HEALTH CARE)
SYSTEM, Biloxi, MS, Employer)
-----)

**Docket No. 22-0654
Issued: May 11, 2023**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On March 21, 2022 appellant filed a timely appeal from a February 3, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

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 November 24, 2021 appellant, then a 65-year-old program management assistant, filed an occupational disease claim (Form CA-2) alleging that she developed stress, tightness of chest,

¹ 5 U.S.C. § 8101 *et seq.*

shortness of breath, and high blood pressure due to factors of her federal employment. She explained that the new Chief of Medical Service, Dr. H., had been hostile to her since May 2021 and had bragged to her that she was sent to get rid of the staff in her unit. On September 13, 2021 appellant received an e-mail from Dr. H. in retaliation to a claim she had filed for a hostile work environment. She alleged that the e-mail was designed to manipulate her to do unethical and inappropriate duties which caused her to become upset and seek help from Occupational Health. Appellant indicated that she first became aware of her condition and realized that it was caused or aggravated by factors of her federal employment on September 13, 2021. She stopped work on September 13, 2021.

In an October 21, 2021 narrative statement, appellant alleged that on May 5, 2021 Dr. H. started her position as Chief of Medical Service. On May 9, 2021 she began her new position as program management assistant. In addition to her new duties as program management assistant, appellant was assigned the tasks of timekeeper (a job duty previously performed by three employees) and she continued to perform her previous duties of secretary. She alleged that Dr. H. began to overload her with additional duties even though she knew that she was performing the duties of secretary, program management assistant, and timekeeper. On May 5, 2021 appellant alleged that Dr. H. manipulated her to perform an illegal and unethical act by misrepresenting herself as the executive administrative assistant and calling a “friend” that she was seeking to hire to provide misinformation. When appellant told her immediate supervisor, A.G., what happened, she was told that she was wrong to have made the call. On May 19, 2021 Dr. H. asked that appellant go into the Specialty Clinic area and record the names of providers that did not show up on time, and to keep a list of providers who left their tour early. Appellant indicated that she felt harassed and bullied by Dr. H.’s actions, and that this caused a hostile work environment. On June 4, 2021 she was working on payroll that was due by noon that day when Dr. H. came into her office and loudly stated that she needed to handle a task immediately, which Dr. H. had outlined in an earlier e-mail. The task involved uploading dictation software onto a computer for a contract provider. Appellant explained that the software had already been installed on the contract provider’s computer, that the contract provider was not new and had previously been taught how to use the software, and that she had contacted Mr. N. to assist the contract provider. She alleged that Dr. H. yelled at her, and demanded that she stop what she was doing and to take care of the task. Appellant indicated that Mr. N. later called her to discuss the unprofessional treatment he had received from Dr. H. She indicated that she was starting to feel the physical toll the hostile work environment was causing her. On June 15, 2021 appellant alleged that Dr. H. asked that she illegally use her government-issued credit card to order forms which she had created. She alleged that as she began to try to push back on Dr. H.’s demands, she was unable to keep up with all the work she was required to do as a timekeeper, secretary, and program management assistant. Appellant indicated that she felt threatened and harassed daily. She explained that she had watched Dr. H. plan, manipulate and bully people to retire, and was afraid that she was now targeted. Appellant noted that the Dr. F., the deputy chief of staff, was helping Dr. H. to get rid of people. She alleged that Dr. H. sent e-mails and reminders of her demands of extra duties directly to her, not to her supervisor, and put untimely due times for the tasks. In a one-week period, appellant indicated that Dr. H. had added 26 additional duties to her already full workload. Because of the additional duties placed on her by Dr. H., she alleged that she was barely able to stay caught up with her other duties as timekeeper, secretary and program management assistant. Appellant’s stress level was elevated, and she began to feel ill. On June 24, 2021 she alleged that Dr. H. sent an e-mail to a provider stating that she/appellant was going to discuss absent without leave

(AWOL) with a provider. Appellant indicated that she was not a supervisor, Dr. H. was the provider's immediate supervisor, and that she was friends with the provider. This caused stress as the provider became angry with her, thinking that she had created the problem. Appellant alleged that Dr. H. created such a hostile work environment that she felt pressured and stressed daily, and overloaded. She alleged that Dr. H. began to target and harass her by demanding to see her position description, asking for her resume, and saying things daily to her about employees not getting bonuses this year, because they were not doing the duties in their job description. Appellant alleged that Dr. H. told her to get "out of my seat and go to HR (human resources) and knock on every door" until she got a copy of the position descriptions for every administrative staff member in the Medical Services unit and bring it to her. When she explained that she did not have the time to go to HR, Dr. H. demanded that she call HR and request a copy of each administrative staff's resume in the Medical Services unit. Appellant indicated that their position descriptions fell under the purview of the Administrative Officer, Ms. A.G. On August 4, 2021 she alleged that Dr. H. asked the employee who previously held her position what her duties were when she held the position, and demanded a list of the duties she had previously performed. Appellant indicated that the employee told Dr. H. that appellant was performing a lot more duties than she did when she held the position, and that she thought that Dr. H. was trying to get rid of her. On August 11, 2021 she alleged that Dr. H. stormed into her office yelling and screaming demanding that she add Electronic Patient Assessment Solution Suite (ePASS) access for a new provider, who was also her niece. Appellant explained that both her immediate supervisor and she had discussed the situation and determined that there was a problem in HR and that they were waiting for it to clear. Dr. H. got mad and sent her an ugly message to fix her relative's ePASS access immediately. Appellant also alleged that Dr. H. told her that she did not know how to do her job, and told her that J.J., a supervisor, had indicated that it was her duty, so she needed to get this fixed immediately. When she again informed Dr. H. that the situation was being handled with the help of her immediate supervisor, Dr. H. told appellant to send the employee home without pay until she could fix the situation. On September 13, 2021 appellant alleged that Dr. H. sent her a list of tasks for which she had not been trained in her new position, and demanded that the tasks be completed within two days and presented to Dr. F. She became upset and felt her chest tighten and experienced shortness of breath, because she felt that she was being retaliated against as she had filed an Equal Employment Opportunity (EEO) claim against her for harassment and hostile work environment. Appellant noted that she had witnessed Dr. H. do the same things to Dr. Q. in an effort to get rid of him. She indicated that she went to Occupational Health and her blood pressure was 210 over 101. Appellant was sent home that day. She indicated that she has been off work since September 13, 2021 for severe high blood pressure problems, and placed on several new medications because of the stress on her body due to working with Dr. H. over the past six months. Appellant denied other stress in her life.

With her claim, appellant submitted work excuse notes dated September 16 through October 7, 2021 from a nurse practitioner; an October 29, 2021 work excuse note from Dr. Paul G. Matherne, a Board-certified family practitioner, and an October 21, 2021 questionnaire from appellant denying other sources of stress.

In a December 6, 2021 development letter, OWCP informed appellant of the deficiencies of her claim. It requested that she submit additional factual and medical evidence and provided a factual questionnaire for her completion. By separate development letter of even date, OWCP requested additional information from the employing establishment, including comments from a

knowledgeable supervisor regarding the allegations in appellant's narrative statement and the accompanying documentation. It afforded both parties 30 days to respond. The employing establishment did not respond.

Appellant subsequently submitted a packet entitled "medical information" which contained a September 13, 2021 blood pressure reading; an October 21, 2021 lab test results; and progress reports and work excuses from a nurse practitioner dated from September 16 through October 22, 2021.

OWCP also received progress reports from Dr. Paul G. Matherne, a family practitioner, dated October 29 and December 15, 2021. In a December 15, 2021 note, Dr. Matherne diagnosed diabetes mellitus without complication, severe uncontrolled hypertension, acute situational disturbance, hypertension, and other medical conditions. He indicated that appellant stated she has not been to work since September due to a personal conflict with a coworker which caused chest pain and uncontrolled elevated blood pressure. Dr. Matherne noted appellant's concerns regarding returning to work.

By decision dated February 3, 2022, OWCP denied appellant's claim for an employment-related emotional condition, finding that she had not substantiated a compensable factor of employment. 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 FECA² has the burden of proof to establish the essential elements of his or her claim,³ 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 in the performance of duty, and that any specific condition or disability for work for which he or she claims compensation is causally related to that employment injury.⁴ 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.⁵

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

² *Id.*

³ *O.G.*, Docket No. 18-0359 (issued August 7, 2019); *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

⁴ *O.G., id.*; *M.M.*, Docket No. 08-1510 (issued November 25, 2010); *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁵ 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).

evidence establishing that the identified compensable employment factors are causally related to the emotional condition.⁶

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment.⁷ 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 under FECA. There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within the concept or coverage under FECA.⁹ 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.¹⁰ The Board has held that overwork, when substantiated by sufficient factual information to corroborate appellant's account of events, may be a compensable factor of employment.¹¹ On the other hand, when an injury or illness results from an employee's feelings of job insecurity *per se*, fear of a reduction-in-force, his or her frustration from not being permitted to work in a particular environment or hold a particular position, unhappiness with doing work, or frustration in not given the work desired or hold a particular position, such injury or illness falls outside FECA's coverage because they are found not to have arisen out of employment.¹²

To the extent that, disputes and incidents alleged as constituting harassment by coworkers are established as occurring and arising from a claimant's performance of his or her regular duties, these could constitute employment factors.¹³ However, for harassment to give rise to a compensable disability under FECA there must be evidence that harassment did, in fact, occur. Mere perceptions of harassment are not compensable under FECA.¹⁴

OWCP's regulations provide that an employer who has reason to disagree with an aspect of the claimant's allegation should submit a statement that specifically describes the factual

⁶ *O.G.*, *supra* note 3; *George H. Clark*, 56 ECAB 162 (2004).

⁷ *T.L.*, Docket No. 18-0100 (issued June 20, 2019); *L.D.*, 58 ECAB 344 (2007); *Robert Breeden*, 57 ECAB 622 (2006).

⁸ 28 ECAB 125 (1976).

⁹ *S.K.*, Docket No. 18-1648 (issued March 4, 2019); *A.K.*, 58 ECAB 119 (2006); *David Apgar*, 57 ECAB 137 (2005).

¹⁰ *Cutler*, *supra* note 8; *O.P.*, Docket No. 19-0445 (issued July 24, 2019); *Trudy A. Scott*, 52 ECAB 309 (2001).

¹¹ *S.S.*, Docket No. 19-1021 (issued April 21, 2021); *I.P.*, Docket No. 17-1178 (issued June 12, 2018); *William H. Fortner*, 49 ECAB 324 (1998).

¹² *S.S.*, *id.*; *see also B.S.*, Docket No. 19-0378 (issued July 10, 2019); *William E. Seare*, 47 ECAB 663 (1996).

¹³ *T.L.*, *supra* note 7; *M.R.*, Docket No. 18-0304 (issued November 13, 2018); *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

¹⁴ *A.E.*, Docket No. 18-1587 (issued March 13, 2019); *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

argument with which it disagrees and provide evidence or argument to support that position.¹⁵ Its regulations further provide in certain types of claims, such as a stress claim, a statement from the employer is imperative to properly develop and adjudicate the claim.¹⁶

ANALYSIS

The Board finds that appellant has established overwork as a compensable factor of her federal employment.

Appellant alleged that she developed anxiety, stress, high blood pressure, and shortness of breath due to being overworked and undertrained. In addition to her new duties as a program management assistant, she was assigned the tasks of timekeeper, which was a job duty that she indicated was previously performed by three employees; and she also continued to perform her previous duties of secretary. Appellant further alleged that Dr. H. began to overload her with additional duties even though she knew that she was also performing the duties of secretary, program management assistant, and timekeeper. She asserted that, in a one-week period, Dr. H. had added 26 additional duties to her already full workload, and because of the additional duties placed on her by Dr. H., her stress level rose, and she fell ill. Appellant asserted that she experienced emotional stress in carrying out these numerous employment duties, while attempting to meet management directives from Dr. H. The Board has held that overwork may constitute a compensable factor of employment.¹⁷ In light of appellant's description of her increased duties and responsibilities, the Board finds that she has established a compensable employment factor with respect to her allegation of overwork.¹⁸

Appellant also alleged a hostile work environment due to harassment and retaliation from Dr. H. and other management officials. However, she provided no corroborating evidence in support of her allegations. The issue of whether a claimant has established harassment or retaliation under FECA is whether the claimant has submitted sufficient evidence to establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.¹⁹ For harassment to give rise to a compensable disability under FECA, there must be evidence that harassment did, in fact, occur.²⁰ As the case record lacks corroborative evidence, the Board finds that appellant has not established a compensable employment factor with respect to the alleged harassment and retaliation.

¹⁵ 20 C.F.R. § 10.117(a); *D.L.*, Docket No. 15-0547 (issued May 2, 2016).

¹⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.7(a)(2) (June 2011).

¹⁷ *S.S.*, Docket No. 19-1021 (issued April 21, 2021); *I.P.*, Docket No. 17-1178 (issued June 12, 2018); *William H. Fortner*, 49 ECAB 324 (1998).

¹⁸ *See R.R.*, Docket No. 20-0954 (issued December 8, 2022); *L.Y.*, Docket No. 20-1108 (issued November 24, 2021).

¹⁹ *Supra* note 14; *see also L.Y., id.*

²⁰ *Id.*

As appellant has established overwork as a compensable factor of employment, the case must be remanded for an evaluation of the medical evidence with regard to the issue of causal relationship.²¹ Accordingly, the Board will set aside OWCP's February 3, 2022 decision and remand the case for further development of the evidence with regard to whether appellant has established an emotional condition causally related to the accepted compensable employment factor of overwork.²² Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that appellant has established overwork as a compensable factor of her federal employment. The Board further finds that she has not established additional employment factors as compensable.

ORDER

IT IS HEREBY ORDERED THAT the February 3, 2022 decision of the Office of Workers' Compensation Programs is reversed in part and affirmed in part. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: May 11, 2023
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board

²¹ See *L.Y., id.*; *S.S.*, Docket No. 21-0814 (issued July 14, 2021); *M.D.*, Docket No. 15-1796 (issued September 7, 2016).

²² See *R.R.*, *supra* note 18.