

three different times on her route. Appellant asserted that she feared for her life and felt very unsafe so she called her supervisor and called the employing establishment to inform it that she would be returning to the office. On the reverse side of the claim form appellant's supervisor, T.H., confirmed that appellant was approached by a suspected drug dealer who asked for his express package. Appellant stopped work on March 2, 2019.

In a March 19, 2019 attending physician's report, Part B of an authorization for examination and/or treatment (Form CA-16), Angela Pugh-Antee, a licensed clinical social worker, evaluated appellant for a March 2, 2019 injury and symptoms of trauma-related anxiety, poor concentration, crying episodes, fear of leaving home, avoiding people or places, and a decline in activities of daily living. She found that appellant had no prior history of trauma and diagnosed an acute stress disorder. Ms. Pugh-Antee recommended that she undergo individual therapy sessions in order to treat her condition.

In a development letter dated March 28, 2019, 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 letter of even date, OWCP requested that the employing establishment provide additional information, including comments from a knowledgeable supervisor. It afforded both parties 30 days to respond.

In a March 21, 2019 narrative statement, appellant explained that on March 2, 2019 she was told by one of the clerks that she had an express package for her route, but was told that she would not be receiving it to deliver because it contained drugs and the postal police were being called. When she arrived at the apartment building where the package was to be delivered, a man approached her asking for the express package. Appellant asked him for the tracking number and told him that the employing establishment had until 3:00 p.m. that day to deliver the package. The man stated that he needed the package that day and that he had paid for overnight shipping, but she informed him that she did not have his package. Another man then approached her and asked about the same package. Appellant notified her supervisor, who informed her that she would call the postal police and asked her to finish her route. At approximately 3:15 p.m. that same day, she was on her auxiliary route when a car pulled up next to her and the same man from the apartment building asked her if she had the package. Appellant informed him that his package would be delivered the next day and he would be reimbursed because he did not receive his package on time. The man began hitting his steering wheel, gave his name and number to her, and instructed her to call him when his package came in before driving off. Appellant stated that she felt threatened and unsafe and did not know if he would return to cause her bodily harm.

Appellant submitted multiple duty status reports (Form CA-17) dated March 18 to April 16, 2019 in which Ms. Pugh-Antee diagnosed acute stress disorder due to the alleged March 2, 2019 employment incident. Ms. Pugh-Antee checked a box marked "No" to indicate her opinion that appellant was not advised to return to work.

In an April 16, 2019 progress note, Ms. Pugh-Antee advised that appellant could return to work on April 22, 2019. She reasoned that the alleged March 2, 2019 employment incident was still an emotional trigger and reported that appellant was reintegrating herself back into all of the functional areas of her life. Ms. Pugh-Antee encouraged her to speak with her supervisor about

safety precautions and recommended that she remain in a safe place until a new policy is carried out at the employing establishment. She also recommended that appellant be assigned an alternative route to reduce anxiety triggers associated with the March 2, 2019 employment incident.

By decision dated May 3, 2019, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish that the injury and/or events occurred as she described. It explained that she did not support her allegations with specific, substantive, or probative evidence or any witnesses.

On September 5, 2019 appellant requested reconsideration of OWCP's May 3, 2019 decision. In an attached statement, she noted that she was informed on July 2, 2019 that she would have to return to her original route, which caused her to experience a panic attack. On July 8, 2019 appellant was again assigned to return to the same apartments after she explained that she could not do so per her doctor's instructions. When she arrived at the entrance of the apartment complex, she was unable to enter and she began crying and shaking, fearing for her life. Appellant ended up bringing all of the mail from the apartment complex back to the employing establishment and told her supervisor that she could not deliver it. She again asked to be removed from the environment.

Appellant attached an August 21, 2019 medical report in which Dr. Joseph Sejud, Board-certified in emergency medicine, evaluated her for her anxiety and depression. Dr. Sejud recounted the alleged March 2, 2019 employment incident where she was approached by irate customers multiple times requesting a package from her. Appellant's supervisor insisted that appellant continue to deliver mail on her normal route, but she was unable to comply due to fear, anxiety, and depression. Appellant informed Dr. Sejud that the package smelled strongly of marijuana and despite her supervisor stating that the postal police would be called, the package was still released to the men who were harassing her. She subsequently spoke with her union representative and Ms. Pugh-Antee, who advised her not to return to that part of her route. On evaluation Dr. Sejud diagnosed post-traumatic stress disorder (PTSD) and provided that, accepting the facts as true, he had no doubt her injury was work related. He reasoned that the events appellant described were typical of what would result in PTSD symptoms in an average person along with the lack of sensitivity from her supervisor, which intensified her response. Dr. Sejud addressed OWCP's May 3, 2019 decision and attested that Ms. Pugh-Antee's medical evidence and appellant's statements offered numerous avenues of corroboration of her story. He referred her to a psychologist for further evaluation.

In a September 30, 2019 statement, C.S., a postal inspector, recounted that an express package was received on March 2, 2019 that smelled of marijuana. A letter carrier advised that two subjects approached her on her route about the location of the package and she informed them that she did not have it. At approximately 12:09 p.m. M.M., a New Orleans, LA inspector, texted the letter carrier and instructed her to give the parcel to her postmaster or supervisor. Later that day, the carrier informed M.M. that the subjects arrived at the employing establishment to inquire about the package. In order to avoid confrontation, M.M. instructed the employing establishment to give the package to the two subjects.

In an October 4, 2019 statement, L.M., a letter carrier, stated that on March 3, 2019² she discovered a strong scent coming from an express parcel. She informed her supervisor and asked if she would be calling the postal inspector or the postal police, but the supervisor did not respond to her question. Approximately 30 minutes later, the customer who the express parcel was addressed to called the employing establishment to inquire about the package and L.M. informed him that it had not arrived yet. Approximately 20 minutes later, appellant called stating that the same man approached her to inquire about the package. The customer then called the employing establishment again where T.H. informed him that the package had not been scanned yet. L.M. told T.H. that they needed to call the postal inspectors, but T.H. blew it off and she called the inspector herself. Another carrier overheard appellant speaking about the second encounter with the man and stated that a different guy had just approached her about the same package. As appellant continued her route, the man followed her postal truck looking for the package he was expecting. The customer continued to follow her until she told him to call the employing establishment. Appellant then returned to the employing establishment out of fear of the two men who had been following her on her route. L.M. noted that she was shaking and crying at the time.

In an undated statement, S.C., the union branch president, explained that he was notified on March 2, 2019 that appellant felt uncomfortable and unsafe concerning threatening behavior she experienced from two customers on her route. He was informed that the two customers became irate and aggressive after learning their express package was intercepted. S.C. claimed that appellant was pursued three different times while on her route by the same men. Appellant was sent home for the day because of her emotional state and the threatening behavior of the customers. The postal inspectors later allowed the customers to have the package. T.H. later spoke with S.C. on March 4, 2019 and provided that more should have been done to help appellant and to avoid confrontation with the customers.

In an undated medical report, Ms. Pugh-Antee recounted her treatment of appellant for symptoms she experienced after being victimized and approached multiple times by men requesting a package that had been held due to suspicion of drug content. Appellant reported that the men's tone along with their determination to get the package created a sense of fear and subsequently resulted in her ending her day early. Ms. Pugh-Antee diagnosed acute stress disorder and referred appellant to her primary care physician for treatment. She recommended that appellant return to work on April 22, 2019, but that she not return to the apartments where the alleged incident occurred. Additionally, Ms. Pugh-Antee recommended that the office create a written procedure regarding questionable mail and packages and a safety class to reiterate the policy on illegal packaging.

By decision dated March 4, 2020, OWCP denied modification of its prior decision.

² The Board notes that L.M. provided that the alleged employment incident occurred on March 3, 2019; however, this appears to be a typographical error.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of proof to establish the essential elements of his or her claim,⁴ including that he or she sustained an injury 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.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, 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 condition 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. There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within coverage under FECA.⁹ 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 compensable.¹⁰

Allegations alone by a claimant are insufficient to establish a factual basis of an emotional condition claim.¹¹ Where the claimant alleges compensable factors of employment, he or she must

³ *Supra* note 1.

⁴ *R.S.*, Docket No. 20-1307 (issued June 29, 2021); *S.S.*, Docket No. 19-1021 (issued April 21, 2021); *O.G.*, Docket No. 18-0359 (issued August 7, 2019); *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

⁵ *R.S.* and *S.S.*, *id.*; *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁶ 20 C.F.R. § 10.115; *M.K.*, Docket No. 18-1623 (issued April 10, 2019); *Michael E. Smith*, 50 ECAB 313 (1999); *Elaine Pendleton*, *id.*

⁷ *See W.F.*, Docket No. 18-1526 (issued November 26, 2019); *C.M.*, Docket No. 17-1076 (issued November 14, 2018); *C.V.*, Docket No. 18-0580 (issued September 17, 2018); *S.K.*, Docket No. 18-1648 (issued March 4, 2019); *Kathleen D. Walker*, 42 ECAB 603 (1991).

⁸ 28 ECAB 125 (1976).

⁹ *See Lillian Cutler*, *id.*; *see also G.M.*, Docket No. 17-1469 (issued April 2, 2018); *Robert W. Johns*, 51 ECAB 137 (1999).

¹⁰ *A.C.*, Docket No. 18-0507 (issued November 26, 2018); *Pamela D. Casey*, 57 ECAB 260, 263 (2005); *Lillian Cutler*, *supra* note 8.

¹¹ *A.C.*, *id.*

substantiate such allegations with probative and reliable evidence.¹² Personal perceptions alone are insufficient to establish an employment-related emotional condition, and disability is not covered where it results from such factors 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.¹³

For harassment or discrimination to give rise to a compensable disability, there must be evidence which establishes that the acts alleged or implicated by the employee did, in fact, occur.¹⁴ Mere perceptions of harassment or discrimination 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 this case is not in posture for decision.

Appellant asserted that she developed acute stress disorder after a March 2, 2019 employment incident in which she was approached by two people looking for a package three different times on her route. On the reverse side of the claim form T.H., appellant's supervisor, acknowledged that appellant was approached by suspected drug dealers searching for an express package. In a subsequent March 21, 2019 statement, appellant provided further details, elaborating that on March 2, 2019 an express package was being held because it was suspected of containing drugs. She detailed the events of the day in which two men at an apartment complex asked her multiple times for the express package and followed her on her postal route. Appellant claimed that she felt threatened and unsafe after an incident at approximately 3:15 p.m. where she informed the man that his package would be delivered the next day and he proceeded to hit his steering wheel and demand that she call him the instant his package was available.

The Board finds that appellant has established compensable factors of employment under *Cutler*¹⁸ with regard to the March 2, 2019 employment incident where she was followed and questioned by two men regarding the delivery status of a package suspected of containing drugs. Where the claimed disability or condition results from an employee's emotional reaction to his or

¹² *G.R.*, Docket No. 18-0893 (issued November 21, 2018).

¹³ *See A.C.*, *supra* note 10; *Lillian Cutler*, *supra* note 8.

¹⁴ *O.G.*, Docket No. 18-0350 (issued August 7, 2019); *K.W.*, 59 ECAB 271 (2007); *Robert Breeden*, 57 ECAB 622 (2006).

¹⁵ *A.E.*, Docket No. 18-1587 (issued March 13, 2019); *M.D.*, 59 ECAB 211 (2007); *Robert G. Burns*, 57 ECAB 657 (2006).

¹⁶ *J.F.*, 59 ECAB 331 (2008); *Robert Breeden*, *supra* note 14.

¹⁷ *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 *Supra* note 8.

her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA.¹⁹ As she was delivering mail on her route that day, she was approached by two men who questioned her regarding the location of a package. Appellant indicated that, after she informed the men that she did not have their package, the men took several actions, including following her on her delivery route, hitting a steering wheel in frustration, and instructing her to contact them immediately upon learning the whereabouts of the package. She contended that these stressful working conditions caused her diagnosed emotional condition. The Board finds that, as the events of March 2, 2019 occurred while appellant was performing her regularly assigned duties, her emotional reaction to these events constitutes a compensable factor of employment under *Cutler*.²⁰

Appellant also attributed her emotional condition to error or abuse in administrative matters. As a general rule, administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regularly or specially assigned work duties of the employee and are not covered under FECA.²¹ In *Thomas D. McEuen*,²² the Board held that an employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under FECA as such matters pertain to procedures and requirements of the employer and do not bear a direct relation to the work required of an employee. 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, such action will be considered a compensable employment factor.²³ In determining whether the employing establishment erred or acted abusively, the Board will examine the factual evidence of record to determine whether the employing establishment acted reasonably.²⁴

The Board finds that the employing establishment committed error by electing to send appellant back out to the same location where the March 2, 2019 employment incident occurred. Appellant submitted an October 4, 2019 statement where L.M. observed that she was visibly shaking and crying after she was approached by two men searching for the package suspected of containing drugs and her postal truck was later followed by one of the men. She also indicated in a September 5, 2019 statement that she attributed her emotional condition to actions of the employing establishment, noting instances on July 2 and 8, 2019 where she was informed that she would have to return to the apartment complex where the March 2, 2019 employment incident occurred. Appellant asserted that she experienced a panic attack on July 2, 2019 after being informed of her route and later began crying, shaking, and fearing for her life on July 8, 2019 when she was again assigned to return to the apartment complex. The employing establishment's

¹⁹ *Supra* note 10.

²⁰ *Lillian Cutler*, *supra* note 8; *see also* Z.S. Docket No. 16-1783 (issued August 16, 2018).

²¹ *S.K.*, *supra* note 7; *Matilda R. Wyatt*, 52 ECAB 421 (2001).

²² 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

²³ *S.K.*, *supra* note 7; *William H. Fortner*, 49 ECAB 324 (1998).

²⁴ *S.K.*, *id.*; *Ruth S. Johnson*, 46 ECAB 237 (1994).

requirement that she, after encountering a hostile interaction on her route, be ordered to return to the location that was the source of the danger to her person was an unreasonable act and was, therefore, in error.²⁵ As such, appellant has met her burden of proof to establish a second compensable factor of employment.

As appellant has established two compensable factors of employment of the March 2, 2019 employment incident, OWCP must review the medical evidence of record in order to determine whether she has established that her emotional condition is causally related to a compensable work factor.²⁶ Following this and any such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that this case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the March 4, 2020 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: December 8, 2021
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

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

²⁵ *M.R.*, Docket No. 17-1803 (issued February 8, 2019).

²⁶ *Z.S.*, *supra* note 20; *Margaret S. Krzycki*, 43 ECAB 496 (1992).