



## **FACTUAL HISTORY**

On November 23, 2018 appellant, then a 63-year-old customer care agent, filed an occupational disease claim (Form CA-2) alleging that she experienced depression, anxiety, shortness of breath, chest tightness, headaches, eye pain, dizziness, feelings of helplessness and hopelessness, and confusion of thought due to factors of her federal employment, including work-related retirement issues, on-the-job injuries, and denial of requests for time off to attend doctors' appointments. She noted that she first became aware of her condition in May 2018 and first realized its relationship to her federal employment on November 15, 2018. Appellant stopped work on November 15, 2018.

In a letter dated December 3, 2018, the employing establishment controverted appellant's claim, noting that there was no medical evidence submitted to establish that her condition was caused by factors of her federal employment.

In a development letter dated December 6, 2018, OWCP informed appellant that the evidence of record was insufficient to establish her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. In a separate development letter of even date, OWCP requested additional information from the employing establishment, including comments from a knowledgeable supervisor and any additional information such as witness statements or corroborating documents. OWCP afforded both parties 30 days to submit the necessary evidence.

OWCP subsequently received an authorization form, dated April 24, 2018, which showed that appellant attended an employee assistance program (EAP) session that day.

Emergency department discharge notes, dated April 30, 2018, indicated that appellant saw Dr. Ronald Guzas, a Board-certified osteopath specializing in emergency medicine, and listed a discharge diagnosis of rash.

In a November 15, 2018 report, an emergency medical technician (EMT) noted that appellant experienced hyperventilation and excessive crying at work. He related that appellant was suffering from anxiety and depression due to work-related issues. The EMT examined appellant and found no other abnormalities. He transported appellant to a local emergency department without incident.

Hospital discharge notes, dated November 15, 2018, indicated that appellant was treated by Dr. Janos Jeges, a Board-certified specialist in emergency medicine, for chest pain and anxiety and stress reactions.

In a letter dated November 26, 2018, Dr. Mark Glat, Psy. D., a licensed psychologist, noted that he had been treating appellant for moderate-to-severe depression since April 2018. He indicated that she was experiencing depressed mood, weepiness, irritability, poor concentration, fatigue, and a lack of energy. Dr. Glat reported that appellant had a history of work-related stress. Specifically, he noted that appellant was informed in April 2018 that her planned retirement was in question because of difficulties in obtaining the appropriate information. Dr. Glat indicated that since these difficulties emerged, appellant's mood had significantly deteriorated. He further

related that appellant had not been allowed to take time off and schedule doctors' appointments. Dr. Glat reported that he evaluated appellant on November 21, 2018 and found her to present with sadness, weepiness, difficulty in concentrating, irritability, and high levels of anxiety. He diagnosed major depression. Dr. Glat opined that appellant was not able to return to work due to the daily stressors that she was being exposed to at the job.

In a November 30, 2018 report, Anna Olsen, a licensed professional counselor, noted that she had been treating appellant for workplace stress from September 6, 2018 through November 26, 2018. She indicated that appellant had experienced difficulties with the retirement process at work since March 2018. Ms. Olsen diagnosed acute stress disorder and noted that appellant's symptoms included headaches, eye pressure, shingles, hyperventilation, shortness of breath, chest discomfort, sleep disturbance, and concentration difficulties. She opined that appellant's condition was related to her employment situation, not her actual work duties.

In a December 18, 2018 narrative statement, appellant noted that her stress-related issues began when she started planning her retirement in April 2018. She indicated that she applied for a printout of her estimated retirement benefits and was informed that she would not be able to retire in July 2018 as planned. Appellant stated that she contacted her human resources department on numerous occasions and was given conflicting answers. She noted that she tried to contact several departments in her office and the Office of Personnel Management (OPM), but could not resolve her retirement issues. Appellant indicated that she filed an Equal Employment Opportunity (EEO) case and met with a counselor who also failed to reach the retirement specialist. She asserted that she was not adequately informed of her retirement options. Appellant related that she was enrolled in an EAP and sought private counseling because of the stress and anxiety caused by her work. She reported that she developed shingles and experienced difficulty sleeping, anxiety attacks, shortness of breath, chest tightness, headaches, eye pain, dizziness, and feelings of hopelessness and helplessness. Appellant indicated that her leave request to attend EAP appointments every two weeks was denied which further compounded her anxiety. She noted that her position as a customer care agent was stressful because she handled customer complaints regarding lack of service. Appellant asserted that customer care agents were held to higher standards than other employees. She indicated that she had never experienced any of these symptoms in the past and that she was being treated for anxiety and depression.

In an e-mail correspondence, dated January 2, 2019, the employing establishment noted that it had returned all of appellant's calls and left voicemails when she did not answer. It indicated that there was no record that appellant was scheduled for a retirement counseling session. The employing establishment further noted that the HRSSC did not accept faxed retirement paperwork.

On January 4, 2019 the employing establishment controverted appellant's claim. It noted that appellant was informed of her retirement options before she was rehired as an annuitant and that she was advised that she would need to contact OPM when she decided to retire. In response to OWCP's development questionnaire, the employing establishment noted that there were no witnesses or documents that would provide additional information. It stated that appellant was scheduled to work 40 hours per week and that she had not been forced to work overtime. The employing establishment attached a statement from appellant's supervisor, L.M., dated December 28, 2018. L.M. asserted that the employing establishment was not responsible for employee retirement benefits and that it was up to the individual employee to manage finances and

plan for retirement. She noted that appellant was held to the same standards as other customer care agents and that she had not witnessed appellant's crying meltdowns at work. L.M. indicated that only the first EAP meeting was permitted on company time and that the rest must be scheduled based on the employee's availability. She asserted that appellant's issues did not relate to her duties as a customer care agent and instead resulted from her not being able to retire.

By decision dated February 25, 2019, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish that a medical condition arose during the course of employment and within the scope of compensable work factors as defined by FECA.

In a letter dated April 10, 2019, appellant argued that she submitted a rebuttal statement prior to the issuance of the February 25, 2019 decision. She asserted that the statement was received by OWCP on February 22, 2019, but was not entered into the case record and was thus never reviewed. Appellant requested review of her rebuttal statement and attached a priority mail receipt showing a scheduled delivery date of a package to OWCP of February 22, 2019.

On October 15, 2019 appellant requested reconsideration. She asserted that she had timely submitted a rebuttal statement that was not entered into the record. In an accompanying statement, appellant noted that she attended an EAP session on April 24, 2018 that was paid for by the employing establishment. She indicated that the session was related to anxiety and depression issues associated with the retirement process. Appellant stated that she used her annual and sick leave to continue attending EAP counseling. She noted that she requested leave without pay (LWOP) to continue EAP counseling without discipline after exhausting her annual and sick leave. Appellant indicated that she scheduled sessions once every two weeks at the earliest available time at 10:00 a.m. She reported that there were no weekend or earlier appointments available and noted that the arrangement would make her late for work. Appellant asserted that she was informed that her participation in the EAP program could not result in disciplinary action.

Appellant resubmitted a November 26, 2018 report from Dr. Glat and a November 30, 2018 report from Ms. Olsen.

In a letter dated February 18, 2019, Ms. Olsen noted that appellant began counseling sessions on September 6, 2018 to address workplace stress. She indicated that the sessions were scheduled weekly until November 1, 2018, when the intervals were changed to every other week. Ms. Olsen noted that appellant scheduled the earliest available appointment for each of her sessions.

By decision dated December 9, 2019, OWCP denied modification of the February 25, 2019 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> has the burden of proof to establish the essential elements of his or her claim, including the facts that the individual is an employee of the United States within the meaning of FECA, that the claim was filed within the applicable time

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<sup>3</sup> *Supra* note 1.

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 employment injury.<sup>4</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>5</sup>

To establish an emotional condition causally related to factors of his or her federal employment, a claimant must submit: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to the condition; (2) rationalized medical evidence establishing 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.<sup>6</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>7</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. 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.<sup>8</sup> 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.<sup>9</sup>

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employing establishment rather than the regular or specially assigned work duties of the employee and are not covered under FECA.<sup>10</sup> However, the Board has 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.<sup>11</sup>

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<sup>4</sup> S.Z., Docket No. 20-0106 (issued July 9, 2020); *R.C.*, 59 ECAB 427 (2008).

<sup>5</sup> *Id.*

<sup>6</sup> *A.F.*, Docket No. 20-0525 (issued September 14, 2020); *George H. Clark*, 56 ECAB 162 (2004); *Kathleen D. Walker*, 42 ECAB 603 (1991).

<sup>7</sup> 28 ECAB 125 (1976).

<sup>8</sup> *K.D.*, Docket No. 19-1542 (issued September 8, 2020); *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>9</sup> *R.D.*, Docket No. 19-0877 (issued September 8, 2020); *A.E.*, Docket No. 18-1587 (issued March 13, 2019); *Gregorio E. Conde*, 52 ECAB 410 (2001).

<sup>10</sup> *A.B.*, Docket No. 18-0635 (issued August 14, 2020); *Andrew J. Sheppard*, 53 ECAB 170, 171 (2001); *Matilda R. Wyatt*, 52 ECAB 421, 423 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990); *reaff'd on recon.*, 42 ECAB 566 (1991).

<sup>11</sup> *See O.G.*, Docket No. 18-0359 (issued August 7, 2019); *D.R.*, Docket No. 16-0605 (issued October 17, 2016); *William H. Fortner*, 49 ECAB 324 (1998).

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>12</sup>

Mere perceptions and feelings, alone, are not compensable. To establish entitlement to benefits, a claimant must establish a basis in fact for the claim by supporting his or her allegations with probative and reliable evidence.<sup>13</sup> When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, OWCP must base its decision on an analysis of the medical evidence.<sup>14</sup>

### ANALYSIS

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

Appellant has attributed her emotional condition in part to *Cutler*<sup>15</sup> factors. She alleged that as a customer care agent, she was held to a higher standard than other employees and that she was overworked. Pursuant to *Cutler*<sup>16</sup> this allegation could constitute a compensable employment factor if appellant establishes that her regular job duties or a special assignment caused an emotional condition. 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.<sup>17</sup> The Board finds, however, that appellant submitted no evidence supporting her allegation that she was held to a higher standard than other employees and that she was overworked. In a December 28, 2018 statement, L.M., appellant's supervisor, noted that appellant was held to the same standards as other customer care agents. She indicated that appellant was scheduled to work a 40-hour workweek and that she was never forced to work overtime unwillingly. Thus, the Board finds that appellant has not established a compensable employment factor under *Cutler*.

Appellant made several allegations regarding administrative and personnel actions. As noted above, 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

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<sup>12</sup> *B.S.*, Docket No. 19-0378 (issued July 10, 2019); *Ruth S. Johnson*, 46 ECAB 237 (1994).

<sup>13</sup> *R.D.*, *supra* note 9; *T.G.*, Docket No. 19-0071 (issued May 28, 2019); *Marlon Vera*, 54 ECAB 834 (2003).

<sup>14</sup> *See A.B.*, *supra* note 10; *T.G.*, *id.*; *Garry M. Carlo*, 47 ECAB 299, 305 (1996); *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

<sup>15</sup> *Supra* note 7.

<sup>16</sup> *Id.*

<sup>17</sup> *M.S.*, Docket No. 19-1589 (issued October 7, 2020); *W.F.*, Docket No. 18-1526 (issued November 26, 2019); *Bobbie D. Daly*, 53 ECAB 691 (2002).

of an employee unless there is error or abuse on the part of the employing establishment.<sup>18</sup> In determining whether the employing establishment's actions constitute error or abuse, the Board will examine the factual evidence of record.<sup>19</sup>

Appellant's allegations regarding inadequate responses to her retirement inquiries<sup>20</sup> and the handling of her leave requests<sup>21</sup> relate to administrative or personnel management actions. She has not submitted any corroborative evidence to establish a factual basis for her allegations that her inquiries concerning retirement were not responded to and that she was provided with inconsistent information relating to retirement. In an e-mail correspondence, dated January 2, 2019, the employing establishment noted that the HRSSC returned all of appellant's calls and indicated that there was no record that she was scheduled for a retirement counseling session. It also noted that the HRSSC did not accept faxed retirement paperwork. In a January 4, 2019 letter, the employing establishment indicated that appellant was informed of her retirement options before she was rehired and that she was advised that she would need to contact OPM when she decided to retire. Appellant also asserted that the employing establishment improperly denied her requests for LWOP to attend EAP counseling sessions after she exhausted her annual and sick leave. In an October 15, 2019 statement, she indicated that she scheduled counseling sessions once every two weeks at the earliest available time at 10:00 a.m. Appellant noted that there were no weekend or earlier appointments available and acknowledged that the arrangement would make her late for work. She submitted a letter, dated February 18, 2019, from Ms. Olsen who confirmed that appellant scheduled the earliest available appointment for each of her EAP sessions. In a December 28, 2018 statement, L.M. explained that appellant's leave requests were denied because only the first EAP session was permitted on company time and the rest must be scheduled based on the employee's availability. Under these circumstances, the Board finds that appellant has not established error or abuse in the handling of these administrative matters and thus, has not established a compensable employment factor.<sup>22</sup>

As the Board finds that appellant has not established a compensable employment factor, it is not necessary to consider the medical evidence of record.<sup>23</sup>

On appeal appellant alleges that she submitted a rebuttal statement that was not entered into the record. 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

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<sup>18</sup> *Supra* note 11.

<sup>19</sup> *Supra* note 12.

<sup>20</sup> *W.M.*, Docket No. 15-1080 (issued May 11, 2017); *Michael A. Salvato*, 53 ECAB 666, 668 (2002).

<sup>21</sup> *M.S.*, *supra* note 17; *B.O.*, Docket No. 17-1986 (issued January 18, 2019); *Lori A. Facey*, 55 ECAB 217 (2004); *Judy L. Kahn*, 53 ECAB 321 (2002).

<sup>22</sup> *See M.S.*, *supra* note 17; *W.M.*, *supra* note 20. The Board notes that on reconsideration

<sup>23</sup> *See M.S.*, *id.*; *R.B.*, Docket No. 19-0434 (issued November 22, 2019); *Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

by the Board for the first time on appeal. Thus, the Board is precluded from reviewing this additional evidence.<sup>24</sup>

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 in the performance of duty, as alleged.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 9, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 3, 2021  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

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<sup>24</sup> *Supra* note 2.