

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

R.C., Appellant	)	
	)	
and	)	Docket No. 20-1182
	)	Issued: February 2, 2021
U.S. POSTAL SERVICE, RICHMOND	)	
CARRIER ANNEX, Richmond, KY, Employer	)	
	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

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

**JURISDICTION**

On May 12, 2020 appellant filed a timely appeal from an April 23, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

**ISSUE**

The issue is whether appellant has met his burden of proof to establish an emotional condition in the performance of duty, as alleged.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that, following the issuance of the April 23, 2020 decision, OWCP received additional evidence. However, 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.*

## **FACTUAL HISTORY**

On July 17, 2019 appellant, then a 67-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging that, as a result of his postmaster addressing him about his work performance, he suffered occupational stress due to factors of his employment. He reported that he was in the postmaster's office and had a panic attack. Appellant noted that he first became aware of his condition and realized its relation to his federal employment on May 28, 2019. He stopped work on May 25, 2019.

In a June 15, 2019 statement, appellant described that on May 25, 2019 Postmaster M.B. informed him that he had 19 parcels that day and that the county advertisers were not counted as parcels. He reported that when he told Postmaster M.B. that was how they were counted during their route inspection, Postmaster M.B. instructed him to "go to the office" with R.W., a union steward. Appellant related that Postmaster M.B. looked up numbers from the September 2018 route inspection and questioned him about why he went over his allotted time for his route earlier in the week. He reported that Postmaster M.B. then asked R.W. to inform appellant that he could be fired for what he posted on social media. Appellant described how he continued to question Postmaster M.B. about who informed him about the post and other allegations against him. He noted that he laid his head in his hands and felt his heart racing. Appellant indicated that R.W. brought him water and a cold towel to place on his face and neck. He reported that they called his wife, who took him home. Appellant related that he became calmer, until Monday evening when he began to think about returning to work on Tuesday and got upset again. He noted that he made an appointment with a doctor on May 28, 2019 and was prescribed anxiety medication. Appellant explained that he attended a follow-up appointment on June 12, 2019 and his blood pressure was still high. He indicated that he was prescribed medication to help him sleep and control his blood pressure, and that he had never had these medications prescribed before.

Appellant submitted a June 10, 2019 statement from R.W. He related that on May 25, 2019 he was asked to go to Postmaster M.B.'s office to have a talk with appellant. R.W. indicated that Postmaster M.B. asked appellant about how long it took him to complete his route on specific dates and also informed appellant that he was going to conduct an office count on his route and another route next week. He noted that appellant asked Postmaster M.B. why he had a vendetta against appellant and Postmaster M.B. denied having a vendetta against appellant. R.W. reported that Postmaster M.B. informed appellant that he could be fired for posting about management on social media. He noted that appellant and Postmaster M.B. went back and forth about the social media post. R.W. indicated that appellant asked Postmaster M.B. if he was going to count the bundles of county advertisers as parcels like they did during the inspection route in September 2018. He related that Postmaster M.B. initially said "No," and then said that he would count them. R.W. noted that appellant also asked about why he was issued a letter of warning for his attendance instead of a job discussion. He reported that he noticed a change in appellant's breathing followed by shaking in his hands and arms. Postmaster M.B. asked appellant if he was okay, and appellant asked him to call his wife in order to have her pick him up.

In a June 12, 2019 witness statement, B.K. related that on January 28, 2019 he heard Postmaster M.B. "angrily engaging" appellant on the workroom floor regarding his sick leave usage. He also explained that on or around May 25, 2019 he heard Postmaster M.B. "angrily engaging" appellant on the workroom floor because the Postmaster refused to count the county

advertisers as parcels. B.W. reported that when appellant reminded Postmaster M.B. that this was not the way they were counted, Postmaster M.B. yelled at appellant to “go to the office.”

OWCP received another witness statement dated June 12, 2019 by J.W. that was identical to B.K.’s statement.

Appellant submitted letters dated June 12 through July 17, 2019 and a healthcare certification form dated June 10, 2019 from Dr. Arthur G. Yin, a Board-certified internist. He indicated that appellant was seen in his office on May 28, June 12 and 28, and July 17, 2019 for high blood pressure and an anxiety attack on May 28, 2019. Dr. Yin requested that appellant be excused from work until August 14, 2019.

In a development letter dated July 22, 2019, OWCP informed appellant that the evidence of record was insufficient to establish his claim. It advised him of the type of medical and factual evidence necessary to support his claim and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the requested information. A similar letter of even date requested additional information from the employing establishment. Both parties were allotted 30 days to respond.

Appellant submitted after visit summary reports and letters by Dr. Yin dated May 28 through August 13, 2019. The reports indicated that appellant was evaluated for an anxiety problem and high blood pressure.

In an August 8, 2019 report, Carrie Koontz, a licensed clinical social worker (LCSW) and licensed clinical alcohol and drug counselor (LCAD), indicated that appellant was evaluated for feelings of depression and anxiety. She noted that appellant felt that his job was being threatened. Ms. Koontz provided examination findings and noted a problem list of anxiety, depression, employment, sleep, stress, and worry.

In an August 14, 2019 letter, Ms. Koontz indicated that she had evaluated appellant for counseling services due to recent anxiety and panic that he experienced as a result of increased work stress. She reported that appellant was also under the care of Dr. Yin for medication management to assist in managing his symptoms of high blood pressure, increased heart rate, and heart palpitations. Ms. Koontz noted that appellant was diagnosed with adjustment disorder with mixed anxiety and depression.

On September 10, 2019 OWCP received a statement from Postmaster M.B. Postmaster M.B. indicated that on May 25, 2019 he questioned appellant about his work performance on May 22, 2019. He explained that he reviewed appellant’s time on his route and mail volumes from September 2018 when a formal inspection was done and noted that it took appellant longer to complete his route on May 22, 2019, even though he had less mail than in September 2018 with a route inspector. Postmaster M.B. indicated that appellant could not explain his work performance, except that he had parcels. He asserted that all actions taken were in compliance with the collective bargaining agreement and did not violate any of appellant’s contractual routes. Postmaster M.B. argued that appellant’s claims of disparate treatment and/or violation of his rights had no merit.

By a September 20, 2019 decision, OWCP denied appellant's claim. It found that the evidence of record was insufficient to establish that he sustained an anxiety attack at work as he alleged. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On January 24, 2020 appellant requested reconsideration and submitted additional medical evidence. He explained that Dr. Yin had diagnosed him with an anxiety attack and high blood pressure as a result of the May 25, 2019 traumatic event at work. Appellant alleged that he was still suffering from anxiety when he attempted to return to work on July 16, 2019 and R.W. asked him to sign documents at work. He noted that he signed the documents under stress and was unable to complete his route due to increased anxiety and blood pressure. Appellant asserted that R.W. should not have completed a Form CA-2 on his behalf, but that she should have completed a Form CA-1 for a traumatic emotional experience that occurred on May 25, 2019.

Appellant submitted a letter and after visit summary report dated September 18, 2019 by Dr. Yin who indicated that appellant was seen in his clinic on that date and should remain out of work until October 30, 2019.

In a September 12, 2019 letter, Ms. Koontz informed OWCP that appellant was going through a medication change and should remain off work until October 5, 2019.

In an October 18, 2019 letter, Ms. Koontz indicated that she had treated appellant since August 2019 for ongoing anxiety related to a work-related event that occurred on May 25, 2019. She reported that appellant had his first anxiety attack after Postmaster M.B. threatened to fire him. Ms. Koontz advised that appellant should continue with his prescribed medication and continue with counseling.

In an October 30, 2019 letter, Dr. Yin explained that appellant had been under his care since May 28, 2019 due to a traumatic experience that happened on May 25, 2019, while he was at work. He reported that appellant's postmaster had threatened to fire him over a post on social media. Dr. Yin noted that appellant had informed him that, after being threatened, his heart began to race and began sweating. He reported that he had treated appellant for several years and had never treated him for an anxiety attack, depression, or high blood pressure. Dr. Yin indicated that, since May 28, 2019, he had prescribed medication to appellant for all three of these conditions.

In a January 2, 2020 letter, Dr. Saeed Hamid, a Board-certified psychiatrist and neurologist, indicated that he had examined appellant on December 5 and 19, 2019. He opined that appellant's symptoms were attributable to a traumatic experience at his workplace on May 25, 2019. Dr. Hamid noted that appellant had been diagnosed with anxiety disorder and major depressive disorder. He reported that appellant had also developed insomnia and difficulty staying focused since the May 25, 2019 traumatic experience.

In a January 14, 2020 letter, Ms. Koontz indicated that appellant had received regular counseling sessions since August 2019 and had been approved for another six counseling sessions related to the traumatic event experienced on May 25, 2019.

By decision dated April 23, 2020, OWCP modified the September 20, 2019 decision. It accepted the implicated employment factors had occurred as alleged, but denied appellant's

emotional condition claim, finding that the evidence of record was insufficient to establish that the employment factors were compensable. OWCP concluded that appellant had not established an emotional condition in the performance of duty.

### **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 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 of FECA,<sup>4</sup> 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.<sup>5</sup>

To establish an emotional condition in the performance of duty, appellant 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>6</sup>

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment.<sup>7</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 under FECA. Where the disability results from an employee's emotional reaction to his or her regular or specially assigned work duties or a requirement imposed by the employment, the disability is deemed compensable.<sup>8</sup> However, disability is not compensable when it results from factors such as an employee's fear of 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

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

<sup>4</sup> *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>5</sup> *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>6</sup> *See S.K.*, Docket No. 18-1648 (issued March 14, 2019); *G.R.*, Docket No. 18-893 (issued November 21, 2018); *George H. Clark*, 56 ECAB 162 (2004); *Kathleen D. Walker*, 42 ECAB 603 (1991).

<sup>7</sup> *L.Y.*, Docket No. 18-1619 (issued April 12, 2019); *L.D.*, 58 ECAB 344 (2007).

<sup>8</sup> *A.C.*, Docket No. 18-0507 (issued November 26, 2018); *Pamela D. Casey*, 57 ECAB 260, 263 (2005); *Lillian Cutler*, 28 ECAB 125, 129 (1976).

<sup>9</sup> *William E. Seare*, 47 ECAB 663 (1996); *Lillian Cutler, id.*

or specially assigned work duties of the employee and are not covered under FECA.<sup>10</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 employment factor.<sup>11</sup> A claimant must support his or her allegations with probative and reliable evidence. Personal perceptions and feelings alone are insufficient to establish an employment-related emotional condition.<sup>12</sup>

Harassment and discrimination by supervisors and coworkers, if established as occurring and arising from the performance of work duties, can constitute a compensable employment factor.<sup>13</sup> A claimant, however, must substantiate allegations of harassment and discrimination with probative and reliable evidence.<sup>14</sup> Additionally, verbal altercations and difficult relationships with supervisors, when sufficiently detailed by the claimant and supported by the record, may constitute factors of employment. This does not imply, however, that every statement uttered in the workplace will give rise to coverage under FECA.<sup>15</sup>

### ANALYSIS

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

Appellant has attributed his emotional condition to an incident that occurred with Postmaster M.B. on May 25, 2019. He indicated that he got into a disagreement with Postmaster M.B. about how to count county advertisers as parcels and was instructed to go to Postmaster M.B.'s office with R.W., a union steward. Appellant related that Postmaster M.B. questioned him about why he went over his allotted time for his route earlier in the week. He indicated that Postmaster M.B. also informed him that he could be fired for what he posted on social media. Appellant asserted that his heart began to race and he began to shake. He alleged that he had experienced anxiety, difficulty sleeping, and high blood pressure since the incident.

The Board finds that appellant's meeting with Postmaster M.B. on May 25, 2019 regarding his work performance and his post on social media relate to administrative functions or personnel matters of the employer and not the regular or specially assigned work duties of the employee.<sup>16</sup>

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<sup>10</sup> *C.V.*, Docket No. 18-0580 (issued September 17, 2018); *Andrew J. Sheppard*, 53 ECAB 170, 171 (2001); *Matilda R. Wyatt*, 52 ECAB 421 (2001).

<sup>11</sup> *C.V.*, *id.*; *Kim Nguyen*, 53 ECAB 127 (2001); *William H. Fortner*, 49 ECAB 324 (1998). See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon*, 42 ECAB 566 (1991).

<sup>12</sup> *M.R.*, Docket No. 18-0305 (issued October 18, 2018); *Roger Williams*, 52 ECAB 468 (2001).

<sup>13</sup> *C.B.*, Docket No. 19-1351 (issued March 25, 2020); *E.K.*, Docket No. 17-0246 (issued April 23, 2018); *T.G.*, 58 ECAB 189 (2006); *Doretha M. Belnavis*, 57 ECAB 311 (2006).

<sup>14</sup> *D.W.*, Docket No. 19-0449 (issued September 24, 2019); *C.W.*, 58 ECAB 137 (2006).

<sup>15</sup> *Y.B.*, Docket No. 16-0193 (issued July 23, 2018); *Marguerite J. Toland*, 52 ECAB 294 (2001).

<sup>16</sup> *F.W.*, Docket No. 19-0107 (issued June 10, 2020); *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *Beverly R. Jones*, 55 ECAB 411, 416 (2004).

For an administrative or personnel matter to be considered a compensable factor of employment, the evidence must establish error or abuse on the part of the employer.<sup>17</sup> The Board finds that appellant did not submit sufficient evidence to establish that Postmaster M.B. acted unreasonably or engaged in error or abuse with respect to administrative/personnel matters.<sup>18</sup> Appellant submitted a June 10, 2019 statement from R.W. who confirmed that he met with appellant and Postmaster M.B. in his office on May 25, 2019. He did not give any indication that Postmaster M.B. acted erroneously. Additionally, while witness statements from B.K. and J.W. provide some support that Postmaster M.B. yelled at appellant, they fail to describe an incident that would demonstrate that Postmaster M.B. acted erroneously.<sup>19</sup> The Board has held that mere dislike or disagreement with certain supervisory actions will not be compensable absent error or abuse on the part of the supervisor.<sup>20</sup> As appellant has not established error or abuse on the part of Postmaster M.B.'s actions, he has not established a compensable factor of employment.

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>21</sup>

On appeal appellant alleges that Postmaster M.B. threatened to fire him. As explained above, the evidence of record is insufficient to support that Postmaster M.B.'s actions constituted error or abuse.

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 his burden of proof to establish an emotional condition in the performance of duty, as alleged.

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<sup>17</sup> See *D.W.*, *supra* note 14; *Judy Kahn*, 53 ECAB 321 (2002).

<sup>18</sup> See *R.B.*, Docket No. 19-1256 (issued July 28, 2020); *D.J.*, Docket No. 16-1540 (issued August 21, 2018).

<sup>19</sup> See *S.K.*, Docket No. 18-0705 (issued July 29, 2020).

<sup>20</sup> *F.W.*, Docket No. 19-0107 (issued June 10, 2020); *B.S.*, Docket No. 19-0378 (issued July 10, 2019); *T.C.*, Docket No. 16-0755 (issued December 13, 2016).

<sup>21</sup> See *R.B.*, Docket No. 19-0434 (issued November 22, 2019); *B.O.*, Docket No. 17-1986 (finding that it is not necessary to consider the medical evidence of record if a claimant has not established any compensable employment factors). See also *Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 23, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 2, 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