

FACTUAL HISTORY

On September 14, 2011 appellant, then a 45-year-old supervisory program support assistant, filed a traumatic injury claim alleging that on August 17, 2011 she developed a severe headache, mental confusion, dizziness and inability to walk after being notified by e-mail that she was not selected for a nonsupervisory position. She further alleged that after working one year under a very stressful condition she felt trapped and had a mental breakdown. Appellant stopped work on the date of injury.

By letter dated September 21, 2011, OWCP advised appellant that the evidence submitted was insufficient to establish her claim. It addressed the factual and medical evidence she needed to submit to establish her claim. Also, OWCP requested that the employing establishment submit medical evidence in response to appellant's claim.

In a September 30, 2011 letter, appellant stated that she did not file a grievance because she was a supervisor. She described her work duties which primarily included providing staff to administratively support several outpatient clinics under her supervision. Appellant was in the midst of performing these work duties when she received a very troubling and disturbing e-mail regarding a new position in her service area.

In medical reports dated August 30 through October 20, 2011, Dr. Connie L. Kimble, an attending Board-certified internist, obtained a history that appellant had been overwhelmed and felt hopeless since the denial of her transfer application. She shared an anonymous extremely disparaging letter addressing problems employees had with her. Dr. Kimble advised appellant to seek legal counsel as the letter appeared to be slanderous. She noted that appellant was removed from her supervisory position, but was transferred to a specialty clinic that operated under the same management. Appellant was essentially stripped of her previous responsibilities. She was no longer a part of departmental meetings. Appellant received good reviews, but it was only the hope of transferring that kept her going. She did not know how she would survive in the same environment. Appellant had a panic attack when she received an e-mail denying her request for a transfer. She had another attack while getting ready for work. Dr. Kimble advised that appellant had anxiety state not otherwise specified and depressive disorder not elsewhere classified resulting in her temporary total disability for work commencing August 17, 2011. She opined that her condition was work related. Dr. Kimble observed appellant become progressively depressed after she received the letter. She had become essentially nonfunctional and at times catatonic.

In an August 17, 2010 emergency room discharge report, Dr. Gary A. Roberts, Board-certified in emergency medicine, noted that appellant was treated for dizziness.

Appellant submitted a document with her name captioned from an unknown author. The document contained several unsigned narrative statements, presumably from coworkers, describing her unprofessional behavior towards her staff commencing July 2, 2010 which rendered her an ineffective supervisor.

By letter dated November 2, 2011, OWCP requested that appellant submit additional factual evidence explaining her nonselection for a nonsupervisory position, identifying the author

of the captioned document and describing specific work activities that caused her stress and the contents of the e-mail mentioned in her prior statement.

In a November 10, 2011 letter, appellant contended that she was the only certified candidate who applied for a nonsupervisory position for which she was not selected. She hoped that the position would allow her to get away from the false, unjust and negative cloud that followed her. Appellant attributed her extreme stress to not being either notified about meetings or invited to them. Her supervisor, an assistant chief and chief of service allowed her staff and staff from other services to by-pass her about concerns that should have been redirected to her as the first-line supervisor. Such actions made appellant's job extremely difficult. She often indirectly or by happenstance and rumor mill obtained information related to the meetings after the fact. Because appellant was in disbelief about employees' complaints about her, Assistant Chief John Miller gave her a partial copy of their complaints which was produced by Dr. Eule, chief of the primary care clinic. She contended that Chief Miller wanted her and another supervisor to switch positions so that she could leave the primary care clinic. Appellant contended that the primary care clinic was in the midst of reorganization and Dr. Eule used her as a political and expendable pawn to gain an upper hand over Chief Bloom. He wanted to handpick the new administration supervisor. Appellant contended that, although Dr. Eule got rid of her, he did not get the person he wanted. Marlene Lewis, a human resource employee relations specialist, reviewed the partial document given to appellant and disapproved of it. She advised her to leave the primary care clinic. Appellant stated that moving out of the clinic did not help her because the slanderous document was circulated throughout work.

In a November 10, 2011 letter, Robert E. Smith, a church deacon, stated that he had known appellant for 11 years and was in awe of her Christian attitude and willingness to help those in need. He noted that approximately eight months ago she appeared to be shutting down and withdrawn. Appellant did not answer his telephone calls and she missed meetings. During a September 30, 2011 meeting, Deacon Smith noticed that her appearance had changed as she was not impeccably dressed as usual. Also, appellant was constantly in tears. Deacon Smith stated that attempts to reach out to her were to no avail. He contended that the treatment appellant received from coworkers affected her condition.

In a November 14, 2011 letter, Wayne Sheppard, a church member, stated that he had known appellant for approximately 12 years. Appellant always performed exceptional work in the church and her community. She was always upbeat, high spirited and attentive to her roles and responsibilities. Appellant also used kind words and was overtly friendly and courteous towards others. Approximately 12 months ago, Mr. Sheppard noticed an overall change in appellant's demeanor. Appellant had a melancholy disposition. Initially, she was reluctant to discuss her situation with Mr. Sheppard. Eventually, appellant told him that she was having issues and challenges at work that caused her to feel depressed and oppressed. She cried stating that her work situation had worsened. Appellant's depressive and oppressive state worsened as she was no longer sociable, cheerful or upbeat. Mr. Sheppard stated that appellant stopped coming to church. His wife, who was a registered nurse, informed him that appellant was in a deep depression and perhaps on the verge of a nervous breakdown. Appellant stated that in a meeting that she was under attack and scrutiny by her employer and coworkers for committing unfair labor practices.

In a November 16, 2011 letter, Loreen Gunn, an employee, related that when appellant was removed from her work area in August 2010, she felt that she was not given a chance to defend the allegations against her. Her demeanor changed as she became untrusting of everyone in their department. Ms. Gunn stated that appellant's demeanor was further exasperated by not being selected for a nonsupervisory position in 2011.

In an August 15, 2011 letter, the employing establishment advised appellant that the program specialist position she had applied for was given to another candidate.

Performance appraisals dated October 30, 2008 and October 27, 2010 indicated that appellant received an excellent rating. An October 11, 2011 performance appraisal indicated that she was rated as fully successful.

In a December 12, 2011 decision, OWCP denied appellant's claim on the grounds that she failed to establish any compensable employment factors.

LEGAL PRECEDENT

A claimant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he or she claims compensation was caused or adversely affected by factors of his or her federal employment.² To establish that he or she sustained an emotional condition in the performance of duty, a claimant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his or her condition; (2) medical evidence establishing that he or she has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his or her emotional condition.³

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. 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.⁴ 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.⁵

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regular or specially

² *Pamela R. Rice*, 38 ECAB 838 (1987).

³ *See Donna Faye Cardwell*, 41 ECAB 730 (1990).

⁴ 5 U.S.C. §§ 8101-8193; *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

⁵ *Gregorio E. Conde*, 52 ECAB 410 (2001).

assigned work duties of the employee and are not covered under FECA⁶ 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.⁷ 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.⁸

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, OWCP, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.⁹ If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor. 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.¹⁰

ANALYSIS

Appellant alleged that she sustained an emotional condition due to several incidents at the employing establishment. Primarily, she alleged instances of harassment and unfair treatment by her supervisor, Chief Bloom, Assistant Chief Miller, Dr. Eule and her coworkers. OWCP denied appellant's emotional condition claim on the grounds that she did not establish any compensable employment factors. The Board must, therefore, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of FECA.

Appellant contended that her supervisor, Chief Bloom, and Assistant Chief Miller created a stressful work environment by failing to notify and include her in meetings. She stated that they also allowed her staff and staff from other services to by-pass her about concerns that she should have handled as a first-line supervisor. Appellant alleged that her coworkers wrote slanderous statements about her supervisory actions. To the extent that disputes and incidents alleged as constituting harassment by supervisors and coworkers are established as occurring and arising from her performance of her regular duties, these could constitute a compensable employment factor.¹¹ However, for harassment and discrimination to give rise to a compensable disability under FECA, there must be evidence that harassment or discrimination did in fact

⁶ See *Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

⁷ See *William H. Fortner*, 49 ECAB 324 (1998).

⁸ *Ruth S. Johnson*, 46 ECAB 237 (1994).

⁹ *Dennis J. Balogh*, 52 ECAB 232 (2001).

¹⁰ *Id.*

¹¹ *Charles D. Edwards*, 55 ECAB 258 (2004).

occur. Mere perceptions of harassment or discrimination are not compensable under FECA.¹² To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.¹³ Appellant has not submitted sufficient probative factual evidence to support her allegations of harassment. She stated that she did not file a grievance against management for its actions. The statements from Deacon Smith and Mr. Sheppard attributed the change in appellant's physical appearance and emotional condition to being attacked and scrutinized by her employer and coworkers regarding unfair labor practices. However, the Board finds that these statements are general in nature and do not describe any specific incidents of harassment by the employing establishment or appellant's coworkers. Appellant submitted statements from coworkers, which she deemed slanderous regarding her supervisory actions. However, the Board notes that these statements are not signed. The Board finds that this unsigned evidence is of diminished probative value as it lacks proper identification.¹⁴ Based on the statements from Deacon Smith, Mr. Sheppard and appellant's coworkers, the Board finds that appellant has not established a factual basis for her allegation that she was harassed. Therefore, she has failed to establish a compensable factor of employment in this regard.

Appellant attributed her emotional condition to not being selected for the nonsupervisory program specialist position and being transferred to another clinic. She contended that she was transferred out of the primary care clinic because Dr. Eule used her as a political pawn to gain an upper hand over Chief Bloom. The granting or denial of a request for a transfer¹⁵ and the assignment of work¹⁶ are administrative functions that are not a compensable factor of employment under FECA, absent error or abuse, as they do not involve her ability to perform her regular or specially assigned work duties but rather constitute her desire to work in a different position. Appellant did not submit sufficient evidence to establish that her employer acted abusively or in error with regard to her position. Ms. Gunn stated that appellant's demeanor changed after she was removed from her work area in August 2010 without an opportunity to defend the allegations against her and was not selected for the nonsupervisory position. However, her statement does not establish error or abuse on the part of the employing establishment in transferring appellant out of the primary care clinic and in not selecting her for the position. The Board finds, therefore, that appellant has not established a compensable factor of employment with respect to her transfer and nonselection.

Since appellant has not established a compensable work factor, the Board will not address the medical evidence.¹⁷

¹² *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991). See *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

¹³ See *Frank A. McDowell*, 44 ECAB 522 (1993); *Ruthie M. Evans*, 41 ECAB 416 (1990).

¹⁴ See *Eugene J. Anderson*, 40 ECAB 452 (1989).

¹⁵ See also *Peter D. Butt, Jr.*, 56 ECAB 117 (2004); see *Richard J. Dube*, 42 ECAB 916, 920 (1991).

¹⁶ *James W. Griffin*, 45 ECAB 774 (1994).

¹⁷ *Karen K. Levene*, 54 ECAB 671 (2003).

On appeal, appellant contended that she was set up and used as a pawn in a power struggle between two services. She was not given an opportunity to defend herself because Chief Bloom failed to conduct an investigation. For reasons noted, the Board finds that appellant did not establish a compensable factor of her employment.

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 failed to establish she sustained an emotional condition in the performance of duty, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the December 12, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 12, 2012
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board