

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 January 15, 2015 appellant, then a 47-year-old staff assistant, filed an occupational disease claim (Form CA-2) alleging that she experienced supervisory harassment, retaliation, and reprisals on or before January 13, 2015 for claiming that a January 2014 occupational back injury had exacerbated preexisting post-traumatic stress disorder (PTSD) and depression.

In a March 9, 2015 letter, OWCP notified appellant of the additional evidence needed to establish her claim, including a detailed description of the incidents alleged to have caused the claimed condition, and medical evidence establishing that those work factors exacerbated her PTSD and depression. It afforded her 30 days to submit such evidence.

In response, appellant submitted her April 15, 2015 statement describing the incidents she believed caused the claimed aggravation of depression and PTSD. She alleged that Supervisor M.L. denied credit or compensatory time on January 14, 2014, initially refused to sign and requested that she correct February 18, 19, and May 19, 2014 time sheets to conform to leave use procedures, reassigned work duties on March 30, 2014, denied her request to telework beginning March 31, 2014, issued a letter of instruction on April 3, 2014 for failure to follow leave request procedures, denied telework on April 3, 2014, denied her access to electronic files on April 7 and 10, 2014, denied flextime on April 9, 2014, assigned appellant to a detail on May 6, 2014, denied annual and sick leave on May 7 and 19, 2014, issued a letter of reprimand on May 19, 2014 based on misconduct in December 2013, charged her 16 hours of absent without leave (AWOL) on May 12 and 13, 2014 although she was working only four hours a day, imposed leave without pay (LWOP) status for June 1, 2014, and denied a request for Family and Medical Leave Act (FMLA) on June 27, 2014. Appellant also alleged that M.L. instructed coworkers to closely monitor her, and engaged in a pattern of harassment and unwarranted criticism against her. Additionally, she asserted that Manager A.M. contacted her physician on March 11, 2014 in violation of privacy laws, that Supervisor M.T. belittled or criticized her in a January 12, 2015 meeting, and that Supervisor M.G. spoke to an administrator who then cancelled a meeting with appellant.

Appellant provided an April 15, 2015 letter from M.A., a coworker, alleging that appellant was subjected to disparate treatment, harassment, and a hostile work environment from January 2014 onward.

Appellant also submitted supervisory e-mails regarding her leave requests. On March 31, 2014 Supervisor M.L. requested medical documentation supporting her return to work. She denied appellant's requests for leave on May 7, 12, and 14, 2014 as appellant did not follow proper procedures or provide documentation. Supervisor M.L. charged appellant as AWOL. Supervisor M.T. issued a January 13, 2015 e-mail requesting additional documentation for appellant's FMLA request. He noted that he was not harassing or retaliating against appellant, but trying to obtain clarification regarding her multiple requests for advanced sick leave, FMLA

leave, and reasonable accommodations in the absence of any required documentation. Supervisor M.T. granted appellant's FMLA request for 480 hours on February 3, 2015.

Appellant also provided documents relating to disciplinary and scheduling matters. Supervisor M.L. issued a May 19, 2014 letter of reprimand for failure to coordinate the establishment of performance plan folders for fiscal year 2014. In December 18, 2014 e-mails, Supervisor M.T. explained that appellant's position was not eligible for maxi flex, and that she was not approved for telework as her physicians had released her to full-time, regular duty. Supervisor M.L. advised appellant on January 28, 2015 that she failed to follow directions and respond to an important request for information. In a February 2, 2015 letter, Supervisor M.T. noted that appellant failed to print documents for a meeting and did not coordinate a working lunch during January 22 and 23, 2015 leadership meetings. Appellant also submitted Equal Employment Opportunity (EEO) complaint documents dated from May 19, 2014 to April 23, 2015. Appellant also provided medical records.³

The employing establishment submitted June 4 and 10, 2015 letters denying appellant's allegations of harassment, retaliation, and administrative error or abuse. It explained that all matters regarding appellant's work schedule and assignments were administered according to the objective operating procedures set forth in employing establishment manuals. The employing establishment asserted that appellant could not be granted regular telework as the essential functions of her position required her to be in the office to "greet visitors, answer telephone calls, schedule meetings, and perform other duties in person."

Several supervisors submitted June 12, 2015 statements negating appellant's account of events. Supervisor M.L. explained that appellant's position was not approved for telework as it required her to be in the office to greet visitors and perform support tasks. She denied appellant's allegations of harassment and retaliation, noting that she provided appellant detailed instructions regarding her work tasks and administrative procedures for leave use, but that she refused to follow them. Supervisor M.G. acknowledged speaking to an administrator who had scheduled a meeting with appellant, but asserted that the conversation was unrelated to appellant. Supervisor M.T. asserted that he responded in a fair and timely manner to her numerous leave requests and had provided detailed instructions for how to document her requests.

The employing establishment obtained witness statements from appellant's coworkers. On January 8, 2015 G.A., a coworker, contended that appellant displayed a negative attitude during a team meeting that day, and argued with Supervisor M.T. In a June 4, 2015 letter, N.L., a coworker, explained that she was assigned to follow up on urgent tasks assigned to appellant if appellant were absent, but that she did not closely monitor appellant's work. In a June 4, 2015 letter, A.M., a coworker, explained that on March 11, 2015 appellant's physician's office faxed

³ Dr. Zakiya Steadman, an attending Board-certified family practitioner, held appellant off work from March 25 to 28, 2014 for unspecified reasons. On October 31, 2014 Dr. Steadman recommended telework two days a week. On January 21, 2015 Dr. Tracela M. White, an attending clinical psychologist, diagnosed PTSD with anxiety and depression. Dr. Juhi Rohatgi, an attending Board-certified family practitioner, held appellant off work from February 2 to April 30, 2015 due to PTSD, anxiety, and depression caused by "work environment harassment and retaliation." Dr. Raphael Mbachu, an attending Board-certified psychiatrist, opined on May 27, 2014, January 6, and April 6, 2015 that appellant's PTSD was exacerbated by "work environment hostility."

an incomplete work restriction form, so she sent a response fax requesting clarification of appellant's restrictions.

By decision dated July 23, 2015, OWCP denied the claim, finding that appellant failed to establish a compensable factor of employment. It accepted as factual, but not compensable, that the employing establishment denied her requests for telework, a maxi flex schedule, FMLA leave, and the May 19, 2014 letter of reprimand. OWCP found that these were administrative matters unrelated to appellant's assigned duties, and that no error or abuse had been shown. It further found that appellant did not establish her allegations of harassment, intimidation, and excessive criticism as factual.

On April 29, 2016 appellant, through counsel, requested reconsideration. She submitted statements from two coworkers. M.P., a coworker, provided an April 14, 2016 letter, contending that on unspecified dates in April 2014, and from December 1, 2014 to January 30, 2015, M.P. behaved in a disparate, "discourteous, demeaning" manner toward appellant, and once shouted at her during a security pass check. M.P. alleged that appellant became upset after a conversation with Supervisor M.G. on December 1, 2014 regarding an assignment of work duties.

In a December 10, 2014 affidavit, M.M., a coworker, alleged that supervisors treated appellant differently than other workers who had sustained injuries. She contended that Supervisor M.L. was influenced by personnel in the Albuquerque office to discriminate against appellant on the basis of her African-American race because she would not stay "in her place." M.M. explained that the Letter of Instruction was warranted because appellant refused to arrive at and leave work on the schedule necessary to process customer contacts.

Appellant also submitted additional medical evidence.⁴

By decision dated July 14, 2016, OWCP denied modification finding that appellant failed to establish a compensable factor of employment. It found that the witness statements were "not of sufficient probative value to alter the decision dated July 23, 2015."

LEGAL PRECEDENT

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. On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-

⁴ In a March 29, 2016 letter, Dr. Edwin W. Hoeper, an attending Board-certified psychiatrist, related appellant's allegations of supervisory harassment and discrimination. He noted her history of PTSD following military deployment, exacerbated by workplace issues. Dr. Hoeper opined that appellant was temporarily totally disabled from January 13, 2015 to March 17, 2016 due to an exacerbation of PTSD caused by supervisory harassment.

in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position.⁵

To establish an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that she has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to the condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to the emotional condition.⁶

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.⁷ 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.⁸

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.⁹ 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.¹⁰ 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.¹¹

For harassment or discrimination to give rise to a compensable disability under FECA, there must be probative and reliable evidence that harassment or discrimination did in fact

⁵ See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

⁶ *D.C.*, Docket No. 16-1870 (issued May 17, 2017); *George H. Clark*, 56 ECAB 162 (2004).

⁷ See *Charles D. Edwards*, 55 ECAB 258 (2004); *Norma L. Blank*, 43 ECAB 384 (1993).

⁸ *Lori A. Facey*, 55 ECAB217 (2004); *Norma L. Blank*, *id.*

⁹ See *Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990); *reaff'd on recon.*, 42 ECAB 556 (1991).

¹⁰ See *William H. Fortner*, 49 ECAB 324 (1998).

¹¹ *Ruth S. Johnson*, 46 ECAB 237 (1994).

occur.¹² Mere perceptions of harassment, retaliation, or discrimination are not compensable under FECA.¹³

ANALYSIS

Appellant filed an emotional condition claim, which OWCP denied as the evidence did not establish a compensable factor of employment. She has not attributed her emotional condition to the performance of her regular or specially assigned duties as a staff assistant under *Cutler*.¹⁴ Rather, this case is based on her allegations of error and abuse in administrative matters, and a pattern of harassment.

Appellant made a series of specific allegations regarding administrative and personnel actions with regard to leave matters,¹⁵ administrative discipline, and assignment and monitoring of work¹⁶ by her supervisors. In *Thomas D. McEuen*,¹⁷ the Board held that an employee's emotional reaction to administrative or personnel matters by the employing establishment is generally not covered under FECA as such matters pertain to procedures and requirements of the employing establishment and do not bear a direct relation to the work required of the employee. The Board noted, however, that coverage under FECA would attach if the factual circumstances surrounding the administrative or personnel action established error or abuse by superiors in dealing with the claimant. Absent evidence of such error or abuse, the resulting emotional condition must be considered self-generated and not employment generated. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.¹⁸

Appellant alleged several matters pertaining to leave use and timekeeping issues. She asserted that her supervisors had denied requests for credit or compensatory time on January 14, 2014, refused to sign uncorrected time sheets on February 18 and May 19, 2014, denied annual and sick leave on May 7 and 9, 2014, charged her AWOL on May 12 and 13, 2014, imposed LWOP on June 1, 2014, and denied a request for FMLA leave on June 27, 2014. Appellant submitted e-mails from supervisors M.L. and M.T. explaining that she did not follow procedures for requesting leave for May 7, 12, and 14, 2014, and approving FMLA leave as of February 3, 2015. Supervisor M.T. also provided a June 12, 2015 statement explaining that he responded to appellant's leave requests with detailed instructions regarding required documentation.

¹² *Marlon Vera*, 54 ECAB 834 (2003).

¹³ *Kim Nguyen*, 53 ECAB 127 (2001).

¹⁴ *See supra* note 5.

¹⁵ *J.C.*, 58 ECAB 594 (2007).

¹⁶ *Donney T. Drennon-Gala*, 56 ECAB 469, 475 (2005); *Beverly R. Jones*, 55 ECAB 411, 416 (2004); *Charles D. Edwards*, 55 ECAB 258, 270 (2004).

¹⁷ *Supra* note 5.

¹⁸ *See Richard J. Dube*, 42 ECAB 916, 920 (1991).

The Board finds that there is no credible evidence of error or abuse by the employing establishment in the handling of these administrative matters relating to leave requests. Appellant's supervisors explained that appellant's leave requests were denied due to failure to follow established procedures. Their e-mails and letters demonstrate that they acted reasonably. Mere disagreement or dislike of a supervisory or managerial action will not be compensable absent evidence of error or abuse.¹⁹ The Board finds that appellant has not established any error or abuse related to these administrative matters.

Appellant also attributed her condition to an April 3, 2014 letter of instruction and May 9, 2014 letter of reprimand, and being monitored by a coworker. Coworker N.L. explained that while she was instructed to follow up on appellant's urgent tasks if appellant were absent, she did not closely monitor appellant's work. Performance appraisals and the monitoring of an employee's performance are administrative functions of a supervisor.²⁰ There is no indication that the employing establishment committed error or acted abusively in these assessments or monitoring. Therefore, appellant has not established a compensable employment factor in this regard.

Appellant also attributed the claimed emotional condition to the employing establishment's denial of telework beginning March 31, 2014, denial of flextime on April 9, 2014, denial of a maxiflex schedule, being assigned new duties on March 30, 2014 and to a work detail on May 6, 2014, and allegedly being denied access to computer files on April 7 and 10, 2014. Supervisor M.T. explained in December 18, 2014 e-mails that appellant's position was not eligible for maxiflex and that she could not telework as her physician released her to full duty. Additionally, a June 10, 2015 statement from an employing establishment human resources officer noted, and the June 12, 2015 statement from Supervisor M.L. explain, that appellant could not telework as her core duties required her presence in the office. Issues of work scheduling, telework, the assignment of work, and computer access all pertain to appellant's desire to work in a particular environment, and do not constitute compensable factors of employment.²¹ Additionally, several supervisory statements demonstrate that the employing establishment acted reasonably in denying the requested schedule changes and telework, and that no error or abuse was shown.

Appellant also alleged that the employing establishment erred by contacting her physician. In a June 4, 2015 letter, A.M., a coworker, confirmed that on March 11, 2015, she sent a fax to appellant's physician requesting clarification of any work restrictions as the physician had not completed the form. FECA's implementing regulations permit an employer to "contact the employee's physician in writing concerning the work limitations imposed by the effects of the injury and possible job assignments."²² The Board finds that the employing establishment's response to the physician's fax was reasonable under the circumstances presented. She has thus failed to establish a compensable employment factor in this regard.

¹⁹ A.K., Docket No. 14-437 (issued June 9, 2014).

²⁰ T.C., Docket No. 16-0755 (issued December 13, 2016); *Donney T. Drennon-Gala*, 56 ECAB 469 (2005).

²¹ *Gregorio E. Conde*, 52 ECAB 410 (2001).

²² 20 C.F.R. § 10.506.

Appellant also attributed the claimed emotional condition to a pattern of supervisory harassment, specifying that Supervisor M.T. belittled or criticized her in a January 12, 2015 meeting, and Supervisor M.G. spoke to an administrator who then cancelled a meeting with her. However, G.A., a coworker, reported that appellant argued with Supervisor M.T. in a January 8, 2015 meeting, and displayed a negative attitude. In a June 12, 2015 statement, Supervisor M.G. acknowledged speaking to the administrator, but that the conversation had nothing to do with appellant and that she was not mentioned.

The Board finds that appellant did not submit probative evidence corroborating her allegations of harassment. Also, the employing establishment and appellant's supervisors denied her allegations in June 4 and 12, 2015 letters, explaining that appellant failed to follow leave and scheduling procedures. The witness statements she provided were too vague to establish any of the alleged incidents of harassment. The absence of clear documentation diminishes the validity of appellant's contentions in this case. Mere perceptions of harassment or abuse, absent any factual substantiation, is not in the performance of duty.²³ As she has not substantiated her allegations with probative evidence, appellant has not established a compensable employment factor under FECA with respect to the claimed harassment.

The Board finds that appellant has not established any of her allegations as compensable. Appellant submitted no evidence corroborating her allegations of administrative error or abuse regarding leave matters, work schedules, performance appraisals, disciplinary matters, or the assignment of work, nor has she established supervisory harassment, hostility, or reprisal. Additionally, the witness statements tend to negate her recollections. As appellant has not established any compensable factor of employment, the medical evidence need not be addressed.²⁴

On appeal, counsel contends that appellant had established a compensable factor of employment, as the statement of M.P. accompanying the April 22, 2016 reconsideration request was sufficient to establish appellant's allegations as factual. As set forth above, appellant did not submit sufficient evidence to establish her allegations of harassment as factual.

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.

²³ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

²⁴ *Margaret S. Krzycki*, 43 ECAB 496 (1992).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 14, 2016 is affirmed.

Issued: July 11, 2017
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

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