United States Department of Labor
Employees' Compensation Appeals Board

F.L., Appellant	)	
and	)	**Docket No. 11-638**
	)	**Issued: October 13, 2011**
U.S. POSTAL SERVICE, POST OFFICE, Bellmawr, NJ, Employer	)	

Appearances:
S. Robert Freidel, Jr., Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On December 22, 2010 appellant filed a timely appeal from the Office of Workers' Compensation Programs' (OWCP) merit decision dated November 23, 2010 denying her emotional condition claim. Pursuant to the Federal Employees' Compensation Act (FECA)[1] and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met her burden of proof in establishing that she sustained an emotional condition in the performance of duty.

FACTUAL HISTORY

On October 1, 2010 appellant, then a 40-year-old postal manager, filed an occupational disease claim alleging that she experienced stress due to unfair and discriminatory work practices on the part of the employing establishment. She claimed that two new Caucasian male managers

[1] 5 U.S.C. § 8101 *et seq.*

with jobs identical to hers were being paid for overtime, while she was not. Appellant was concerned that management would retaliate against her for exposing the discriminatory treatment by way of demotion.

The employing establishment controverted appellant's claim, asserting that she was not discriminated against and that she had failed to follow proper internal procedures to address her concerns. Yvette Jackson, manager distribution operations, noted that employees are required to "swipe their badges" when working extra hours in order to ensure payment for additional hours worked. As appellant failed to provide evidence of overtime worked, she failed to establish the fact of injury.

Appellant submitted prescriptions and reports from Dr. Heidi R. Vidal, a treating physician. In a report dated October 14, 2010, Dr. Vidal diagnosed depression and panic disorder. Noting that appellant was exposed to "severe harassment [and] discrimination," she opined that "the stress of work triggers [and] exacerbates [appellant's] illness." Appellant submitted reports dated April 28 and May 30, 2008 from Diane Wolovnick, a licensed social worker, who diagnosed depressive disorder and anxiety. On October 4, 2010 Dr. George Chatyrka, a treating physician, diagnosed depression, hypertension and alopecia secondary to work-related stress.

In an October 1, 2010 memorandum to Yvette Russell and F. Harriet of the employing establishment, appellant documented a midnight meeting wherein she identified discriminatory practices. She alleged that she had long been given a directive that she should not be compensated for overtime hours worked but, instead, should leave early on other days to "even it out." Appellant stated that similarly-situated male employees were compensated for overtime worked and that Bill Jones was being paid more than she was, although he had fewer responsibilities. She contended that Ms. Jackson was unprofessional, failed to provide her with and acknowledge the proper paperwork related to her claim and unfairly removed her from training. Appellant asserted that the meeting somehow turned into an "all out brawl."

In a letter dated October 18, 2010, OWCP informed appellant that the evidence submitted was insufficient to establish her claim and advised her to provide proof of discrimination on the part of the employing establishment. Appellant was also instructed to provide a medical report, with a diagnosis and an opinion as to the cause of the diagnosed condition.

In a statement dated October 16, 2010, appellant alleged that she was allegedly forced to work long hours without extra pay, while white male counterparts were paid "hour for hour, dollar for dollar." William Jones was elevated deceitfully so that he would receive a higher level of pay than appellant. Appellant was reportedly discriminated against on the basis of race and gender. Management failed to refer her for counseling following her mother's death in May 2010 and talked about her to craft employees. Management treated appellant like a second class citizen, even though she was an exemplary employee and was never disciplined for poor performance. Management placed a man who had threatened her life back in direct contact with her and refused her request for a transfer without explanation. Appellant was, then, "yanked" out of training and replaced by a white supervisor. She contended that the postal investigator did not conduct a thorough investigation of her claims, but rather held her hostage for two hours and continued to badger her and tried to coerce her into dropping her claim.

In an October 14, 2010 statement, appellant's husband indicated that his wife complained about working long hours without pay. On October 1, 2010 he drove appellant to the employing establishment, where she met with her boss from midnight until 2:00 a.m. Appellant left the meeting in tears and stated that her supervisor refused to acknowledge or sign her completed claim form.

Appellant submitted a September 9, 2009 employing establishment memorandum to all employees on the subject of "Acts and Threats of Violence in the Workplace." The memorandum indicated that the employing establishment had a zero tolerance policy regarding such acts or threats and that evidence of such would elicit a prompt investigation and severe disciplinary action.

The record contains a November 6, 2009 report of an investigation into the conduct of Sung Choi, mail processing clerk. On October 13, 2009 appellant notified the postal inspector that she received a threat from Mr. Choi, who allegedly yelled at her, leaned across a table, told her to go to hell and told her she was a bad woman. She was afraid he that would hit her. Mr. Choi reportedly put his hand in appellant's face and stated in a very devious way, "Your gonna get yours mother f****r." In an October 16, 2009 interview, Deborah Beckman, a general clerk, indicated that, on October 1, 2010, she heard Mr. Choi speaking to appellant in a loud, threatening voice, stating, "You are a very bad person" and "I want to go home," while pointing his finger in appellant's face. Gerard Ella stated that he overheard appellant and Ms. Novak talking about an incident that had just occurred wherein Mr. Choi was yelling at appellant in anger. On October 21, 2009 Mr. Choi stated, "I feel remorseful that this unfortunate event occurred when my true intention was doing the job right. Above all, I sincerely regret yelling and swearing at [appellant] as well."

Appellant submitted an undated statement from Richard Hogan, a fellow supervisor, who indicated that SDOs on Tour 1 were instructed to make up any hours worked (over 8.5 hours) as compensatory time, rather than receive overtime pay. She discovered that supervisors on other tours were being paid for overtime worked.

In an October 13, 2010 statement, Clerk Gregory Freeman, appellant's cousin, indicated that supervisors, Ms. Novak and Ms. Jackson, were very unprofessional in the way they spoke to employees and showed favoritism and discriminated against African Americans. He stated that Ms. Jackson expressed her dislike for appellant many times and "threatened people" not to ask appellant for help.

On October 19, 2010 Darryl Fledger, a coworker, stated that Ms. Jackson unfairly denied appellant's request for training "because she was a manager." He noted that other Caucasian managers were scheduled to attend the training. Mr. Fledger asserted that the work environment needed improvement; that other managers pulled rank; that employees in Tour 1 were forced to work overtime without compensation, while white male managers received pay for overtime worked (Mr. Jones and Roger Danbury); and that appellant was frightened when Mr. Choi returned to work under her supervision, noting that his action was determined not to be a serious threat.

Appellant submitted an August 25, 2008 notification of absence request form reflecting the employing establishment's approval of her request to leave early on the date in question. The form contains the notation, "time accumulated from dual positions and no T-time paid." In an accompanying statement, appellant indicated that her leave request was intended to make up for performing a dual position without getting paid. On November 12, 2010 she alleged that Ms. Jackson tried to bully her into deciding not to file her claim.

Appellant submitted medical evidence, including an October 20, 2010 report from Dr. Vidal. She diagnosed major depressive disorder and panic disorder, which she opined were work related due to "alleged severe harassment and discrimination on the job."

In an undated statement, appellant alleged that, although Ms. Jackson refused to sign or acknowledge her request for absence or her Form CA-2 claim, she often approved extended leave for other employees. She expressed her belief that Ms. Jackson's treatment was in retaliation for the filing of an Equal Employment Opportunity (EEO) complaint.

In an undated letter to appellant's attorney, reiterated appellant's allegations. Appellant stated that she was forced to perform two jobs and to work extended long hours without pay. She also indicated that the employing establishment passed her over, promoting a junior manager who had much less experience. Supervisor Mr. Russell informed appellant that she would have no chance of a promotion if she filed a claim and bullied her on October 1, 2010.

In an October 23, 2010 decision, OWCP denied appellant's claim, finding that she had not established a compensable factor of employment. It determined that she had not established discrimination or harassment or that the employing establishment acted improperly regarding administrative matters.

LEGAL PRECEDENT

To establish a claim that an emotional condition arose in the performance of duty, a claimant must submit the following: (1) medical evidence establishing that he 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.[2]

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 illness has some connection with employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the medical evidence establishes that the disability results from an employee's emotional reaction to his regular or specially-assigned employment duties or to a requirement imposed by the employing establishment, the disability comes within coverage of FECA. The same result is reached when the emotional disability resulted from the employee's emotional reaction to the nature of his work or his fear and anxiety regarding his

[2] *D.L.*, 58 ECAB 217 (2006).

ability to carry out his work duties.[3] By contrast, there are disabilities having some kind of causal connection with the employment that are not covered under workers' compensation law because they are not found to have arisen out of employment, such as when disability results from an employee's fear of reduction-in-force or frustration from not being permitted to work in a particular environment or to hold a particular position.[4] An employee's emotional reaction to an administrative or personnel matter is generally not covered by workers' compensation. The Board has held, however, that error or abuse by the employing establishment in an administrative or personnel matter may afford coverage.[5]

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. 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.[6]

The Board has held that allegations, alone, by a claimant are insufficient to establish a factual basis for an emotional condition claim but must be substantiated by the evidence.[7] Mere perceptions and feelings of harassment or discrimination will not support an award of compensation. The claimant must establish such allegations with probative and reliable evidence.[8]

With regard to claims under FECA, the Board has held that the determination of an employee's rights or remedies under other statutory authority does not establish entitlement to benefits under FECA. To establish disability, an employee's injury must be shown to be causally related to an accepted injury or accepted factors of his or her federal employment. For this reason, the determinations of other administrative agencies or courts, while instructive, are not determinative with regard to disability arising under FECA. Findings made by the MSPB or

[3] *Ronald J. Jablanski*, 56 ECAB 616 (2005); *Lillian Cutler*, 28 ECAB 125, 129 (1976).

[4] *Id.*

[5] *Margreate Lublin*, 44 ECAB 945 (1993). *See generally Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

[6] *D.L.*, *supra* note 2; *T.G.*, 58 ECAB 189 (2006); *C.S.*, 58 ECAB 137 (2006); *A.K.*, 58 ECAB 119 (2006).

[7] *Charles E. McAndrews*, 55 ECAB 711 (2004); *see also Arthur F. Hougens*, 42 ECAB 455 (1991) and *Ruthie M. Evans*, 41 ECAB 416 (1990) (in each case, the Board looked beyond the claimant's allegations to determine whether or not the evidence established such allegations).

[8] *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991); *Donna Faye Cardwell*, 41 ECAB 730 (1990) (for harassment to give rise to a compensable disability, there must be some evidence that harassment or discrimination did in fact occur); *Pamela R. Rice*, 38 ECAB 838 (1987) (it was found that the employee failed to establish the incidents or actions characterized as harassment).

EEO complaint may constitute substantial evidence relative to a claim to be considered by OWCP and the Board.[9]

ANALYSIS

Appellant did not attribute her emotional condition to any specially-assigned job requirement or duty arising from her status as an employee under *Cutler*. Rather, she contends that she experienced stress as a result of discriminatory and abusive actions on the part of her supervisors. Having considered the evidence and argument presented, the Board finds that appellant has failed to establish a compensable employment factor. Therefore, appellant failed to meet her burden of proof to establish that she sustained an emotional condition causally related to factors of her federal employment.

Appellant alleged that she was denied overtime pay while Caucasian male managers with jobs identical to hers were being paid for overtime. The Board finds that these allegations relate to administrative or personnel matters, unrelated to her regular or specially-assigned work duties and, therefore, do not fall within the coverage of FECA.[10] Although the handling of disciplinary actions and leave requests, the assignment of work duties and the monitoring of work activities are generally related to the employment, they are administrative functions of the employer and not duties of the employee.[11] However, the Board has also found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment[12]. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.[13]

Appellant alleged that she was instructed to adjust her work schedule to compensate for overtime worked, rather than receive overtime pay. She submitted employment records reflecting that she requested approval to leave early on certain days to make up for overtime worked. Appellant provided a statement from Mr. Hogan, who corroborated her claim that her employees on Tour 1 were told to make up overtime worked as compensatory time with no pay. She did not, however, provide any evidence to support her allegation that other employees received pay for overtime worked while she did not. Mr. Hogan stated without explanation that appellant "discovered" that other employees were being paid for overtime worked. Additionally, the employing establishment controverted her allegations of discrimination, noting that employees are required to "swipe their badges" when working extra hours in order to ensure payment for additional hours worked. In this case, appellant has not submitted sufficient

[9] *See Beverly R. Jones*, 55 ECAB 411 (2004).

[10] *See Lori A. Facey*, 55 ECAB 217 (2004). *See also Janet I. Jones*, 47 ECAB 345, 347 (1996); *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988). *See also Jimmy B. Copeland*, 43 ECAB 339 (1991) (An investigation by the employing establishment is an administrative matter).

[11] *Id.*

[12] *Thomas McEuen*, *supra* note 5.

[13] *See Richard J. Dube*, 42 ECAB 916, 920 (1991).

evidence to show that the employing establishment committed error or abuse with respect to this administrative matter.

Appellant alleged that management improperly placed a man who had threatened her life back in direct contact with her in spite of the employing establishment's zero tolerance policy regarding such acts or threats, which required "a prompt investigation and severe disciplinary action." The evidence establishes, however, that management thoroughly investigated appellant's allegations against Mr. Choi, who allegedly yelled at her, leaned across a table, told her to "go to hell" and told her she was a bad woman. The investigative report reflects that he expressed remorse and sincere regret for the incident. Appellant has not established that the employing establishment's administrative act of permitting Mr. Choi to work in her work environment constituted error or abuse. Additionally, it is well established that an employee's frustration from not being permitted to work in a particular environment or to hold a particular position is not compensable.[14]

Appellant alleged that Mr. Jones was being paid more than she was, although he had fewer responsibilities and that her supervisor passed her over, promoting a junior manager who had much less experience. She has provided no evidence to substantiate these claims. Appellant contended that Ms. Jackson was unprofessional and unfairly removed her from training. Management failed to refer her for counseling following her mother's death, talked about her to craft employees and treated her like a second class citizen. Complaints about the manner in which a supervisor performs his or her duties or the manner in which he or she exercises discretion generally fall outside the scope of coverage provided by FECA. This principle recognizes that a supervisor or manager in general must be allowed to perform his or her duties and employees will, at times, dislike the actions taken.[15] Mere disagreement or dislike of a supervisory or managerial action will not be compensable, absent evidence of error or abuse.[16] Appellant has not established that her supervisor erred or acted abusively in these matters.

Appellant also contended that management failed to provide her with and acknowledge the proper paperwork related to her claim. Actions taken by the employer subsequent to the filing of her claim are administrative functions of the employer and not related to the employee's day-to-day or specially-assigned duties.[17] There is no evidence establishing delay or error with regard to the handling of the claim by appellant's supervisor. The Board finds that the employer acted reasonably and appellant failed to establish a compensable factor of employment with respect to this allegation. The Board also finds that her belief that Ms. Jackson acted in retaliation for the filing of an EEO complaint is self-generated.

[14] *Lillian Cutler*, *supra* note 3.

[15] *T.G.*, *supra* note 6.

[16] *Id.*

[17] *G.S.*, Docket No. 09-764 (issued December 18, 2009). Administrative or personnel matters are generally unrelated to an employee's regular or specially assigned-work duties and do not fall within coverage of FECA absent evidence showing error or abuse on the part of the employing establishment. *C.T.*, Docket No. 08-2160 (issued May 7, 2009).

Appellant alleged that a midnight meeting on October 1, 2010 with her supervisor somehow turned into an "all out brawl." Supervisor Russell informed her that she would have no chance of a promotion if she filed a claim and bullied her. Appellant has provided no evidence to support that an altercation occurred. A verbal altercation, when sufficiently detailed by the claimant and supported by the evidence, may constitute a compensable employment factor.[18] This does not imply, however, that every statement uttered in the workplace will give rise to coverage under FECA.[19] In this case, appellant has not shown how her supervisor's actions rise to the level of verbal abuse or otherwise fall within coverage of FECA.[20] Therefore, she failed to establish that the altercation occurred as alleged.[21]

Appellant made additional allegations of harassment, threats and discrimination on the part of her supervisors. To the extent that incidents alleged as constituting discrimination and harassment are established as factual, these could constitute employment factors.[22] However, for harassment or discrimination to give rise to a compensable disability under FECA, there must be evidence that it did, in fact, occur. Mere perceptions of harassment or discrimination will not support an award of compensation.[23] Other than the allegations addressed above, appellant did not describe any specific instance of alleged harassment or discrimination made by her supervisor. Her general allegations are insufficient to establish that she was harassed or discriminated against by her supervisor at any time. Appellant has not established a compensable employment factor with respect to these allegations.

As appellant did not establish a compensable factor of employment, she failed to establish that her emotional condition arose in the performance of duty.[24]

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 established that her emotional condition arose in the course of her federal employment.

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[18] *C.S.*, *supra* note 6.

[19] *J.C.*, 58 ECAB 594 (2007).

[20] *Harriet J. Landry*, 47 ECAB 543, 547 (1996); *see Leroy Thomas, III*, 46 ECAB 946, 954 (1995); *Alton L. White*, 42 ECAB 666, 669-70 (1991).

[21] *See Denis M. Dupor*, 51 ECAB 482, 486 (2000).

[22] *Kathleen D. Walker*, 42 ECAB 603 (1991).

[23] *Charles E. McAndrews*, 55 ECAB 711 (2004).

[24] As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record. *Marlon Vera*, 54 ECAB 834 (2003); *Margaret S. Krzycki*, 43 ECAB 496 (1992). *See L.K.*, Docket No. 08-849 (issued June 23, 2009).

ORDER

IT IS HEREBY ORDERED THAT the November 23, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 13, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board