

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

T.M., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Detroit, MI, Employer**

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**Docket No. 13-251
Issued: July 5, 2013**

Appearances:
Steve Burt, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 16, 2012 appellant, through her representative, filed a timely appeal from an Office of Workers' Compensation Programs' (OWCP) merit decision dated September 18, 2012 denying her emotional condition claim. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained an emotional condition on March 8, 2012 while in the performance of duty.

On appeal, appellant's representative contends that the employing establishment's treatment of appellant on March 8, 2012 was abusive and that she sustained an emotional condition as a result.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On March 14, 2012 appellant, then a 37-year-old letter carrier, filed a traumatic injury (Form CA-1) alleging that she sustained an emotional condition as a result of being a victim of erroneous and abusive treatment by her supervisor, LaShiba Tarrance. On March 8, 2012 Ms. Tarrance denied appellant the right to exercise her seniority in selecting her route and spoke to her in a highly abusive and bullying manner, leaving her too anxious and upset to continue working.

Appellant submitted documents dated March 8, 2012 verifying that she went to the Employee Assistance Program (EAP) that day at 1:15 p.m. for an intake appointment. Lynn Neideck, a licensed social worker, noted that it would be best for appellant not to return to work until she could meet with her primary care physician on March 9, 2012 at 2:30 p.m. for further evaluation.

On March 9, 2012 Dr. Sandra Sabb, a Board-certified family practitioner, diagnosed stress and anxiety disorder. She opined that appellant was totally disabled for the period March 9 to 25, 2012.

By letter dated March 23, 2012, OWCP notified appellant of the deficiencies of her claim. It afforded her 30 days to submit additional evidence and respond to its inquiries.

Appellant submitted a March 26, 2012 narrative statement and a March 22, 2012 report from Dr. Tariq Abbasi, a Board-certified psychiatrist, who diagnosed depression and opined that she was totally disabled for the period March 8 to April 5, 2012. Dr. Abbasi released her to work on April 5, 2012 without medical restrictions.

On March 29, 2012 Felicia Moore, a Delivery Supervisor, stated that every unassigned regular employee, was given the opportunity to select an assignment for the following week on the preceding Wednesday. Appellant failed to select an assignment and, as an unassigned employee, she was placed on an open assignment according to seniority by management. Ms. Moore reported that appellant was the lowest seniority regular at the employing establishment at the time of injury. She submitted a carrier seniority list and a copy of the hold down assignments that were posted on February 29, 2012 for the assignments that were available for the week in question.

In a March 29, 2012 statement, Ms. Tarrance noted that on March 8, 2012 appellant was assigned to Route 3910 which was the only available route. Appellant was the junior carrier at the branch, which meant that she could be assigned to the last available assignment. She was given the opportunity every Wednesday to pick a hold down assignment for the following week but had failed to do so for the week in question. Ms. Tarrance denied speaking to appellant in a loud or abusive tone of voice and explained that she was not feeling well that day and could not speak loudly or barely even talk for that matter. Appellant requested a private meeting and Ms. Tarrance replied that she would speak to appellant when she came around to give her instructions. Approximately 10 minutes later, Ms. Tarrance noticed that appellant was not at her assignment. Appellant left the building and went out to her car. When she came back into the building, Ms. Tarrance instructed her to report to her assignment. Appellant replied that she was

going to EAP. Ms. Tarrance informed her that she needed to make an appointment. Appellant replied that she was leaving. Ms. Tarrance informed appellant that she would be considered absent without leave (AWOL) for the day.

In an April 6, 2012 letter, OWCP notified appellant that it had received additional information regarding assignment selection and requested additional information. In an April 16, 2012 statement, appellant acknowledged that she had not selected an assignment on the prior Wednesday before the date of injury.

In an April 19, 2012 report, Dr. Abbasi stated that on March 16, 2012 appellant attended her scheduled initial intake session and presented with poor sleep, low mood, anxiety, excessive worries with racing thoughts. Appellant felt overwhelmed, frustrated, victimized and harassed at work. She also complained of being consumed with thoughts about how she was treated at work. Dr. Abbasi diagnosed generalized anxiety disorder and noted that she returned to work on April 5, 2012.

By decision dated April 27, 2012, OWCP denied appellant's claim. It found that the evidence of record was not sufficient to establish administrative error or abuse in the assignment of her route on March 8, 2012.

On May 2, 2012 appellant, through her representative, requested an oral hearing before an OWCP hearing representative. She submitted documents related to scheduling EAP sessions and opting on temporary vacancies and a copy of a settlement agreement.

On August 1, 2012 a telephonic hearing was held before an OWCP hearing representative. Appellant provided testimony and the hearing representative held the case open for 30 days for the submission of additional evidence.

Appellant's representative submitted an August 17, 2012 statement and an August 14, 2012 report from Dr. Abbasi, who stated that appellant had problems with her employment, felt victimized, singled-out and harassed since she was involuntarily transferred to another site. On March 8, 2012 appellant reported that the situation had escalated and she walked out on her job due to excessive stress feeling victimized.

By decision dated September 18, 2012, the hearing representative affirmed the April 27, 2012 decision. She found that the evidence did not establish administrative error in the March 8, 2012 route assignment or abuse by Ms. Tarrance.

LEGAL PRECEDENT

In providing for a compensation program for federal employees, Congress did not contemplate an insurance program against any and every injury, illness or mishap that might befall an employee contemporaneous or coincidental with his or her employment. Liability does not attach merely upon the existence of an employee-employer relation. Instead, Congress provided for the payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.² The phrase while in the

² See 5 U.S.C. § 8102(a).

performance of duty has been interpreted by the Board to be the equivalent of the commonly found prerequisite in workers' compensation law of arising out of and in the course of employment.

In *Lillian Cutler*,³ the Board noted that workers' compensation law is not applicable to each and every injury or illness that is somehow related to an employee's employment. There are situations when an injury or illness has some connection with the employment but nonetheless does not come within the coverage of workers' compensation as they are found not to have arisen out of the employment. When an employee experiences emotional stress in carrying out his or her employment duties or has fear and anxiety regarding her ability to carry out his or her duties and the medical evidence establishes that the disability resulted from his or her emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability resulted from his or her emotional reaction to his or her day-to-day duties. The same result is reached when the emotional disability resulted from the employee's emotional reaction to a special assignment or requirement imposed by the employing establishment or by the nature of the work.⁴

In contrast, a disabling condition resulting from an employee's feelings of job insecurity *per se* is not sufficient to constitute a personal injury sustained in the performance of duty within the meaning of FECA. Disability is not covered when it results from an employee's fear of a reduction-in-force, unhappiness with doing inside work, desire for a different job, brooding over the failure to be given work he or she desires or the employee's frustration in not being permitted to work in a particular environment or to hold a particular position.⁵ Board case precedent demonstrates that the only requirements of employment which will bring a claim within the scope of coverage under FECA are those that relate to the duties the employee is hired to perform.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 work 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 compensable factors of employment and may not be considered.⁷ If a claimant does implicate a factor of employment, OWCP should then consider whether the evidence of record substantiates that factor. As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim; the claim must be supported by probative evidence.⁸ Where

³ 28 ECAB 125 (1976).

⁴ *Id.* at 130.

⁵ See *Lillian Cutler*, *supra* note 3.

⁶ See *Anthony A. Zarcone*, 44 ECAB 751 (1993).

⁷ See *Dennis J. Balogh*, 52 ECAB 232 (2001).

⁸ See *Charles E. McAndrews*, 55 ECAB 711 (2004).

the matter asserted is a compensable factor of employment and the evidence of record established the truth of the matter asserted, OWCP must base its decision on an analysis of the medical evidence.⁹

ANALYSIS

In the present case, appellant has not attributed nor established that her emotional condition is related to her regular duties as a letter carrier under *Cutler*. Rather, she has attributed her emotional reaction to actions taken by her supervisors on March 8, 2012, including: (1) speaking to her in a highly abusive and bullying manner; (2) threatening that she would be AWOL if she went to EAP; and (3) denying her the right to exercise her seniority in selecting her route. The Board must initially review whether these alleged incidents and conditions of employment are covered factors of employment under the terms of FECA.

For harassment to give rise to compensability under FECA, there must be evidence that harassment did, in fact, occur. Mere perceptions of harassment are not compensable under FECA.¹⁰ OWCP found that appellant was not subjected to any harassment by Ms. Tarrance and did not submit sufficient evidence substantiating her allegations. Specifically, there is no evidence substantiating any derogatory remarks made by Ms. Moore or Ms. Tarrance to appellant on March 8, 2012. There is no evidence of record from any witness substantiating appellant's contention that she was harassed by either Ms. Moore or Ms. Tarrance. Rather, Ms. Tarrance denied appellant's allegations and explained that she was unwell and was not able to speak loudly. The evidence of record establishes that appellant attended an EAP session at 1:15 p.m. on March 8, 2012. Appellant did not submit any evidence to show that her supervisors erroneously placed her in an AWOL status or otherwise acted in an abusive or unreasonable manner. There is no evidence from her in support of her allegations that she was harassed by her supervisors on March 8, 2012.

In an April 16, 2012 statement, appellant acknowledged that she had not selected an assignment on the prior Wednesday before the date of injury. In corroborating statements, Ms. Moore and Ms. Tarrance both noted that all employees, including appellant, were given the opportunity to select an assignment for the following week on the preceding Wednesday based on seniority. As appellant had failed to make a selection and had the lowest seniority at the employing establishment on March 8, 2012, she was assigned Route 3910, the only route available. She was assigned to the only available route at the time.

The Board notes that appellant's allegations pertaining to the March 8, 2012 incident relate to the administrative matter of scheduling route assignments. Generally, an employee's emotional reaction to administrative or personnel matters is not covered under FECA. However, when the evidence of record demonstrates that the employing establishment erred or acted unreasonably in a personnel matter, coverage may be afforded.¹¹ The Board finds that the

⁹ See *Jeral R. Gray*, 57 ECAB 611 (2006).

¹⁰ See *Michael Thomas Plante*, 44 ECAB 510 (1993); *William P. George*, 43 ECAB 1159 (1992).

¹¹ See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Norman A. Harris*, 42 ECAB 923 (1991).

evidence of record does not establish that Ms. Moore or Ms. Tarrance acted unreasonably or erred in assigning appellant's route.¹² Therefore, appellant's allegations do not constitute compensable factors of employment.

The evidence of record does not establish appellant's allegations of harassment or that either Ms. Moore or Ms. Tarrance became abusive. Rather, appellant's emotional reaction can be described as self-generated and not arising in the performance of duty but due to her personal frustration in not being permitted to work a particular route. Thus, she has not met her burden of proof to establish a claim.¹³

On appeal, appellant's representative contends that the employing establishment's treatment of appellant on March 8, 2012 was abusive and erroneous. For the reasons stated above, the Board finds that the evidence of record does not substantiate these contentions.

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 that she sustained an emotional condition on March 8, 2012 while in the performance of duty.

¹² See *Kathi A. Scarnato*, 43 ECAB 220 (1991) (the Board noted that the employing establishment retains the right to preserve an environment in which the performance of work is an essential goal). See also *Anthony A. Zarcone*, *supra* note 6; *Drew A. Weissmuller*, 43 ECAB 745 (1992).

¹³ As appellant has failed to establish a compensable employment factor, the Board need not address the medical evidence of record. *Marlon Vera*, 54 ECAB 834 (2003).

ORDER

IT IS HEREBY ORDERED THAT the September 18, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 5, 2013
Washington, DC

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

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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