

**Docket No. 12-1842**  
**Issued: May 22, 2013**

wash-up time to which she was entitled; treated abusively by management; followed by her managers to the time clock and denied a request to use the restroom which resulted in her urinating in her pants.

In an October 3, 2011 statement, John Rhoden, Postmaster, detailed the interaction he had with appellant that day, which allegedly resulted in her urinating into her pants. Appellant approached him to ask what time she should go to lunch instead of asking her supervisor. Mr. Rhoden inquired as to the time her supervisor told her to take lunch and she stated that she could not recall. He spoke with Gene Burton, appellant's supervisor, who advised that appellant should take her lunch immediately. Appellant was informed of Mr. Burton's instructions to take lunch immediately. She responded that she preferred to go at a later time. Mr. Rhoden told appellant to follow Mr. Burton's instructions and go to lunch. Appellant responded that she needed five minutes to wash up and, when asked why she needed this time, she just looked at Mr. Rhoden without answering. Mr. Rhoden asked her if she had handled any toxic or dirty materials. Appellant did not verbally respond, but showed him that she was wearing rubber gloves. Mr. Rhoden told her to take lunch immediately as she had not been handling any toxic or dirty material and was not entitled to five minutes of wash-up time. Appellant turned from him, stated that he was denying her five minutes to wash up and that she was going to use the restroom while she was on the clock. Mr. Rhoden told her to punch out and then use the restroom on her lunch hour. Subsequently, Mr. Burton informed Mr. Rhoden that appellant approached him in the window section area holding the crotch area of her pants and alleging that she had wet her pants. He looked at her pants and pointed out to her that they were not wet. Appellant left the window section, went to the restroom and returned a few minutes later pointing out that her pants were wet. This time, her pants were wet, but Mr. Burton was not sure whether she had wet them while in the restroom. Mr. Burton told appellant that he did not see any puddle anywhere and asked where she had wet herself. Appellant responded by stating that she had wet herself in the restroom.

In an October 3, 2011 statement, Clevester L. Oliver, a coworker, related overhearing a conversation between appellant and Mr. Rhoden that day at about 1:00 p.m. Appellant asked what time she should go to lunch and that Mr. Oliver did not hear the reply. Thereafter, Mr. Oliver saw her walking toward the south entrance hallway asking Mr. Rhoden to allow her to first go the bathroom. Mr. Rhoden instructed her to clock out and then use the restroom. Mr. Oliver did not hear the end of the conversation as appellant informed Mr. Rhoden that she really needed to use the restroom and asked whether he was denying her request. Approximately, five minutes later appellant asked Mr. Oliver if he had overheard her conversation with Mr. Rhoden.

In an October 20, 2011 e-mail, Eugene E. Burton, supervisor customer service, stated that at approximately 1:00 p.m. on October 3, 2011 appellant approached him holding her pants in front and alleged that she wet herself because she had not been allowed to go to the restroom. An examination of appellant's pants revealed no wetness or wet spots on the floor. At this point appellant left for a few minutes, returned and stated "as you can see, I'm wet." Mr. Burton was unsure whether the wetness on her pants was due to urine or water as her pants had been dry when she first approached him.

In an October 25, 2011 investigative report, the employing establishment's Office of Inspector General conducted an investigation whether into appellant filed a fraudulent claim. Based on a review of the statements from Mr. Rhoden, on her claim form, a October 3, 2011 surveillance video and an October 17, 2011 physician's note, the investigator found that the evidence was sufficient to support that she had filed a fraudulent claim for job stress. The report noted that appellant was seen having a conversation at about 12:58 p.m., on October 3, 2011 with Mr. Rhoden. She was next seen at approximately 1:00 p.m., walking to the time clock, clocking out then going to see Mr. Burton in the supervisor's office. Appellant was next seen at approximately 1:01 p.m., entering the restroom, exiting the restroom and looking at her pants. At approximately 1:02 p.m., she was seen entering the supervisor's room for a second time and then seen exiting.

An October 17, 2011 work excuse stated that appellant was incapacitated and disabled from work for the period October 8 to 17, 2011.<sup>2</sup>

By letter dated October 31, 2011, OWCP informed appellant that the evidence of record was insufficient to support her claim. Appellant was advised as to the medical and factual evidence to submit and given 30 days to provide additional information.

In response, appellant submitted medical and factual evidence including: a copy of a tentative collective bargaining agreement; a November 17, 2011 statement; and a November 11, 2011 disability report by Dr. Sara Vizcay, a treating physician, advising that appellant was totally disabled from November 3 to 27, 2011.

Appellant alleged that the work factors that occurred on October 3, 2011 caused her to become stressed, anxious and depressed. She was belittled by Mr. Rhoden that day when he accused her of working improperly, moving too slowly and being a smart ass. Appellant alleged that he failed to show her how she was to work properly or more quickly in putting down approximately five feet of 10 to 20 pounds of bailed mail. At 1:00 p.m., as she was heading to lunch, Mr. Rhoden refused to grant her five minutes of wash-up time pursuant to the contract. Appellant alleged that her gloves became ripped and her hands were dirty from the bundle strapping and that she had to go to the bathroom. She felt threatened when Mr. Rhoden followed her to ensure that she clocked out before going to the restroom. Appellant alleged that the denial of her request for wash-up time resulted in her urinating on herself and to be humiliated.

By decision dated December 6, 2011, OWCP denied appellant's claim on the grounds that the injury did not occur as alleged by her.

On December 19, 2011 appellant requested a telephonic hearing before an OWCP hearing representative, which was held on April 5, 2012.

By decision dated July 11, 2012, the hearing representative affirmed the denial of appellant's claim.

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<sup>2</sup> The physician's signature is illegible.

## **LEGAL PRECEDENT**

To establish a claim that he or she sustained an emotional condition in the performance of duty, an employee must submit the following: (1) medical evidence establishing that he or she has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his or her condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his or her emotional condition.<sup>3</sup>

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment.<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup>

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under FECA.<sup>8</sup> 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.<sup>9</sup> 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.<sup>10</sup>

The Board has held that the manner in which a supervisor exercises his or her discretion falls outside the coverage of FECA. This principal recognizes that a supervisor or manager must be allowed to perform their duties and that employee's will, at times, disagree with actions taken. Mere disagreement with or dislike of actions taken by a supervisor or manager will not be

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<sup>3</sup> V.W., 58 ECAB 428 (2007); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

<sup>4</sup> L.D., 58 ECAB 344 (2007); *Robert Breeden*, 57 ECAB 622 (2006).

<sup>5</sup> A.K., 58 ECAB 119 (2006); *David Apgar*, 57 ECAB 137 (2005).

<sup>6</sup> 5 U.S.C. §§ 8101-8193; *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>7</sup> J.F., 59 ECAB 331 (2008); *Gregorio E. Conde*, 52 ECAB 410 (2001).

<sup>8</sup> See *Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

<sup>9</sup> See *William H. Fortner*, 49 ECAB 324 (1998).

<sup>10</sup> *Ruth S. Johnson*, 46 ECAB 237 (1994).

compensable absent evidence establishing error or abuse.<sup>11</sup> Although the handling of leave requests and attendance matters are generally related to employment, they are administrative matters and not a duty of the employee.<sup>12</sup>

For harassment or discrimination to give rise to a compensable disability, there must be evidence which establishes that the acts alleged or implicated by the employee did, in fact, occur.<sup>13</sup> Mere perceptions of harassment or discrimination are not compensable under FECA.<sup>14</sup> A claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence.<sup>15</sup> Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.<sup>16</sup> A claimant must establish a factual basis for his or her allegations of harassment or discrimination with probative and reliable evidence.<sup>17</sup>

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.<sup>18</sup> If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor.<sup>19</sup> 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.<sup>20</sup>

### ANALYSIS

Appellant alleged several incidents occurring on October 3, 2011 that give rise to an emotional condition. The Board must review whether these alleged incidents or conditions of employment are established as compensable factors under the terms of FECA. The Board notes

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<sup>11</sup> *S.M.*, Docket No. 09-2290 (issued July 12, 2010); *Linda J. Edwards-Delgado*, 55 ECAB 401 (2004).

<sup>12</sup> *C.T.*, Docket No. 08-2160 (issued May 7, 2009); *Jeral R. Gray*, 57 ECAB 611 (2006)

<sup>13</sup> *K.W.*, 59 ECAB 271 (2007); *Robert Breeden*, *supra* note 4.

<sup>14</sup> *M.D.*, 59 ECAB 211 (2007); *Robert G. Burns*, 57 ECAB 657 (2006).

<sup>15</sup> *J.F.*, 59 ECAB 331 (2008); *Robert Breeden*, *supra* note 4.

<sup>16</sup> *G.S.*, Docket No. 09-764 (issued December 18, 2009); *Ronald K. Jablanski*, 56 ECAB 616 (2005); *Penelope C. Owens*, 54 ECAB 684 (2003).

<sup>17</sup> *Robert Breeden*; *supra* note 4; *Beverly R. Jones*, 55 ECAB 411 (2004).

<sup>18</sup> *D.L.*, 58 ECAB 217 (2006); *Jeral R. Gray*, *supra* note 12.

<sup>19</sup> *K.W.*, 59 ECAB 271 (2007); *David C. Lindsey, Jr.*, 56 ECAB 263 (2005).

<sup>20</sup> *Robert Breeden*, *supra* note 4.

that appellant's allegations do not pertain to her regular or specially assigned duties under *Cutler*.<sup>21</sup> Rather, appellant alleged harassment on the part of her managers and error and abuse in administrative matters.

Appellant's supervisor and the postmaster denied that appellant was subjected to harassment. The Board finds that she did not submit sufficient evidence to establish that she was harassed by Mr. Rhoden.<sup>22</sup> The Board has recognized the compensability of physical threats or verbal abuse in certain circumstances. This does not imply, however, that every statement uttered in the workplace will give rise to coverage under FECA.<sup>23</sup>

Appellant alleged that she wet her pants due to management's refusal to allow her to use the restroom prior to clocking out. She alleged that Mr. Rhoden harassed her on October 3, 2011, when he called her a "smart-ass" and questioned why she was processing marriage mail. Appellant alleged that it constituted dirty work for which entitled her to five minutes of wash-up time that was denied. She also asserted that Mr. Rhoden followed her to the time clock and denied her requests to use the restroom.

An employee's complaints about the manner in which supervisors perform supervisory duties or the manner in which supervisors exercise supervisory discretion fall, as a rule, outside the scope of coverage provided by FECA. This principle recognizes that a supervisor must be allowed to perform his duties and that employees will at times dislike actions taken.<sup>24</sup> Furthermore, the Board has held that discussions of job performance by an employee's supervisor and the monitoring and assignment of work are administrative functions that do not fall under the coverage of FECA absent a showing of error or abuse.<sup>25</sup> For harassment or discrimination to give rise to a compensable disability, there must be evidence which establishes that the acts alleged or implicated by the employee did, in fact, occur.<sup>26</sup> Mere perceptions of harassment or discrimination are not compensable.<sup>27</sup>

Appellant alleged that Mr. Rhoden called her a "smart-ass" and caused her to urinate in her pants when he denied her request to use the restroom prior to clocking out. She submitted a statement from Mr. Oliver to support her allegation regarding Mr. Rhoden's denying her request to use a restroom. The evidence of record shows that on October 3, 2011 appellant and Mr. Rhoden spoke until around 1:00 p.m. when he instructed her to take lunch and denied her

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<sup>21</sup> See *Cutler*, *supra* note 6.

<sup>22</sup> See *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment with probative and reliable evidence).

<sup>23</sup> *L.K.*, Docket No. 08-849 (issued June 23, 2009); *Donney T. Drennon-Gala*, 56 ECAB 469 (2005); *Charles D. Edwards*, 55 ECAB 258 (2004).

<sup>24</sup> *Linda J. Edwards-Delgado*, 55 ECAB 401 (2004).

<sup>25</sup> See *Donney T. Drennon-Gala*, *supra* note 23.

<sup>26</sup> *C.T.*, Docket No. 08-2160 (issued May 7, 2009); *Robert G. Burns*, *supra* note 14

<sup>27</sup> *J.F.*, *supra* note 15; *James E. Norris*, 52 ECAB 93 (2000).

request for wash-up time and to use the restroom prior to clocking out. There is no evidence, other than her allegation that he called her a “smart-ass.” As to appellant’s allegation regarding Mr. Rhoden’s denial of her request to use the restroom caused her to urinate on herself, the record does contain a statement from Mr. Oliver who stated that he overheard her asking to use the restroom prior to clocking out for lunch. Mr. Oliver further stated that he did not hear Mr. Rhoden’s response, but only her statement that she needed to use the restroom. The record contains evidence of a surveillance video and the statement from Mr. Burton, casting doubt on appellant’s allegations that she urinated on herself due to the denial of her request to use the restroom prior to clocking out for lunch. Mr. Burton related that she came over to him at about 1:00 p.m. holding her pants and alleging that she wet herself. When he saw that appellant’s pants were not wet, she went to the restroom and came back a few minutes later with wet pants. Based on the statements from Mr. Burton, Mr. Rhodes and Mr. Oliver and the videotape evidence, the Board finds the evidence casts serious doubt on her allegations of the October 3, 2011 incident. As the factual evidence does not support her allegations that Mr. Rhoden called her a “smart-ass” or that the denial of her request to use the restroom resulted in her urinating on herself, appellant has not established a compensable factor of employment with respect to these allegations.

Appellant has not shown that management committed error or abuse with respect to several administrative matters including the denial of her request for wash-up time, which she contended was a violation of her contract and her request to use the restroom prior to clocking out. These are administrative matters.<sup>28</sup> While appellant alleged that she was entitled to wash-up time because marriage mail was dirty, the record is devoid of any evidence supporting her allegation. She has not submitted any evidence supporting her contention that marriage mail was dirty or that Mr. Rhoden acted erroneously or abusively in denying her request for wash-up time. Mr. Rhoden stated that appellant showed him that she was wearing gloves when he asked if she had handled any toxic or dirty material. Appellant was then instructed by him to immediately take lunch as she had not been handling any toxic or dirty material and, thus, was not entitled to five minutes of wash-up time. The record contains no evidence that the employing establishment erred or acted abusively in denying her wash-up time prior to clocking out for her lunch. With respect to the denial of appellant’s request to use the restroom which she alleged caused her to urinate on herself, the evidence of record does not support this allegation despite the fact that while Mr. Oliver stated that he overheard her request. Accordingly, she has not established a compensable factor in that regard.

For the reasons set forth above, appellant has not established any compensable employment factors under FECA and, therefore, has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty.<sup>29</sup>

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<sup>28</sup> See *S.M.*, Docket No. 09-2290 (issued July 12, 2010); *Joe M. Hagewood*, 56 ECAB 479 (2005) (the handling of attendance matters are generally related to employment but are administrative functions of the employer and not duties of the employee); *Ernest St. Pierre*, 51 ECAB 623 (2000) (allegations pertaining to irregularity of breaks an administrative matter).

<sup>29</sup> As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record. See *E.R.*, Docket No. 09-599 (issued June 3, 2009); *Robert Breeden*, *supra* note 4; *Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

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 failed to establish that she sustained an emotional condition in the performance of duty on October 3, 2011.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated July 11, 2012 is affirmed.

Issued: May 22, 2013  
Washington, DC

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

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

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