

worsening of her post-traumatic stress disorder (PTSD) and depression when she was given a letter detailing her to another unit due to allegations of inappropriate conduct which were not disclosed. She notified her supervisor on the date of the incident. The employing establishment controverted the claim stating that appellant's personal and emotional reaction was due to an administrative issue and not work factors.

By letter dated December 20, 2010, OWCP informed appellant that the evidence of record was insufficient to support her claim. It requested additional factual and medical evidence and asked her to respond to the provided questions which were to be submitted within 30 days. By letter of the same date, OWCP requested additional information from the employing establishment.

In a July 9, 2010 employing establishment verbal counseling memorandum, Nurse Manager Beverly J. Nelson, informed appellant that there were several complaints against her from fellow staff members regarding her conduct, which had created a hostile work environment. The memorandum and counseling were presented in the presence of a union representative.

In an October 1, 2010 request for reasonable accommodations, appellant reported that she had PTSD and bipolar 2 disorder. She requested two days' advance notice before supervisors counseled her, a synopsis of the content to be discussed and that a union representative or peer of her choice be present because she had suffered a panic attack when confronted on July 9, 2010.

In a November 14, 2010 e-mail, appellant reported that constant harassment from her work and supervisors was causing her stress and making her physically sick. She stated that the nurse managers verbally counseled and threatened her with disciplinary action in July 2010 because she filed Equal Employment Opportunity (EEO) complaints against them. Appellant also noted that management assigned schedules based on friendships.

In a November 26, 2010 report of contact, appellant stated that she was harassed and provoked by Chanta' McKinley, a fellow registered nurse. She complained to Nurse Manager Nelson but reported that she refused to intervene before the situation escalated.

In a December 3, 2010 employing establishment memorandum, Michele Hill, a registered nurse, reported that appellant was detailed pending a fact-finding of alleged inappropriate conduct. Nurse Hill provided the memorandum to appellant on December 6, 2010 in the presence of a union representative.

In a December 7, 2010 e-mail, appellant reported that she received a letter on December 6, 2010 which accused her of inappropriate conduct, causing her to suffer a panic attack and leave work. She also stated that her supervisors had increased surveillance on her after she threatened to file EEO complaints. Appellant stated that the ongoing stress and harassment at work caused a worsening of her PTSD and depression.

In a December 8, 2010 e-mail and employing establishment incident report, Nurse Manager Nelson reported that appellant suffered stress and an emotional/traumatic injury on December 6, 2010 when she was presented with the fact-finding letter. Appellant had expressed displeasure with her schedule, her stressful work environment and had also made allegations against her supervisors through two EEO complaint suits. Many of her peers and fellow

caregivers had submitted reports of contact about appellant's conduct and interpersonal relationship on duty. As a result, the nursing administration decided to perform fact-finding regarding various allegations.²

Appellant submitted reports dated November 4 to January 20, 2011 from Dr. William Kutner, Board-certified in orthopedic surgery, for an employment-related lifting injury from September 26, 2010. Dr. Kutner reported that she was suffering from stress and depression. He noted that appellant could return to work without restrictions from an orthopedic standpoint but was handicapped by her psychiatric problems.

In December 13, 2010 and January 4, 2011 medical reports, Dr. Laura Dunn, Board-certified in psychiatry, reported that appellant had been her patient since August 26, 2008 for psychiatric services. Appellant was diagnosed with bipolar type 2, PTSD, depression and panic anxiety disorder. On December 6, 2010 she contacted Dr. Dunn reporting that she had received a letter from her supervisor for inappropriate conduct and was going to be detailed to another work location. Appellant was panicked, depressed, could not stop crying and had a resurgence of PTSD-type symptoms. Due to her exacerbated symptoms, she was placed in a hospitalization program. Dr. Dunn opined that appellant's preexisting mental diagnoses were known to be worsened by extreme problems of stress and that her work situation qualified as extreme stress.

By decision dated January 28, 2011, OWCP denied appellant's claim finding that the evidence did not establish a compensable work factor.³

LEGAL PRECEDENT

To establish that an emotional condition was sustained in the performance of duty there must be factual evidence identifying and corroborating employment factors or incidents alleged to have caused or contributed to the condition, medical evidence establishing that the employee has an emotional condition and rationalized medical opinion establishing that compensable employment factors are causally related to the claimed emotional condition.⁴ There must be evidence that acts of harassment or discrimination did, in fact, occur supported by specific, substantive, reliable and probative evidence.⁵

² Nurse Manager Nelson also noted that appellant had returned to work on April 11, 2010 after 18 months of absence. She was approved for Family and Medical Leave Act (FMLA) effective May 29, 2010 to attend regular psychiatric and psychotherapy appointments due to crying spells, anxiety attacks, nightmares and PTSD. Appellant took six weeks of FMLA shortly after the December 6, 2010 incident, claiming that her health had suffered as a result of ongoing harassment since she returned to work in April 2010.

³ The Board notes that appellant submitted additional evidence after OWCP rendered its January 28, 2011 decision. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision. Therefore, this additional evidence cannot be considered by the Board. 20 C.F.R. § 510.2(c)(1); *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952). Appellant may submit this evidence to OWCP, together with a formal request for reconsideration, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b)(2).

⁴ See *Debbie J. Hobbs*, 43 ECAB 135 (1991).

⁵ See *Ruth C. Borden*, 43 ECAB 146 (1991).

Where the disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within the coverage of FECA.⁶ On the other hand, disability is not covered where it results from an employee's fear of a reduction-in-force, frustration from not being permitted to work in a particular environment or to hold a particular position or to secure a promotion. Disabling conditions resulting from an employee's feeling of job insecurity or the desire for a different job do not constitute a personal injury sustained while in the performance of duty within the meaning of FECA.⁷

Workers' compensation does not cover an emotional reaction to an administrative or personnel action unless the evidence shows error or abuse on the part of the employing establishment.⁸ As a rule, however, a claimant's allegations alone are insufficient to establish a factual basis for an emotional condition claim.⁹ Mere perceptions and feelings of harassment or discrimination will not support an award of compensation. The claimant must substantiate such allegations with probative and reliable evidence.¹⁰ The primary reason for requiring factual evidence of allegations of stress in the workplace is to establish a basis in fact for the contentions made, as opposed to mere perceptions of the claimant, which in turn may be fully examined and evaluated by OWCP and the Board.¹¹

The Board has recognized the compensability of verbal altercations or abuse when sufficiently detailed by the claimant and supported by the record. This does not imply, however, that every statement uttered in the workplace will give rise to compensability.¹²

ANALYSIS

Appellant did not attribute her emotional condition to her regular or specially assigned duties under *Cutler*.¹³ In this case, she filed a Form CA-1 and attributed her condition to an incident alleged to have occurred on December 6, 2010. Appellant's primary allegation was that

⁶ *Lillian Cutler*, 28 ECAB 125 (1976).

⁷ *Id.*

⁸ *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon*, 42 ECAB 566, 572-73 (1991).

⁹ *See Arthur F. Hougens*, 42 ECAB 455 (1991); *Ruthie M. Evans*, 41 ECAB 416 (1990) (in each case the Board looked beyond the claimant's allegations of unfair treatment to determine if the evidence corroborated such allegations).

¹⁰ *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) (claimant failed to establish that the incidents or actions which she characterized as harassment actually occurred).

¹¹ *Paul Trotman-Hall*, 45 ECAB 229 (1993) (concurring opinion of Michael E. Groom, Alternate Member).

¹² *See David C. Lindsey*, 56 ECAB 263 (2005). The mere fact that a supervisor or employee may raise his or her voice during the course of an argument does not warrant a finding of verbal abuse. *Joe M. Hagewood*, 56 ECAB 479 (2005).

¹³ *See supra* note 6.

she suffered a panic attack, PTSD and depression when she was given a letter by her supervisors which detailed her to another unit pending a fact-finding investigation due to allegations of inappropriate conduct. The Board has characterized disciplinary actions as administrative matters of the employing establishment, which are only covered under FECA when a showing of error or abuse is made.¹⁴ In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.¹⁵ To support such a claim, appellant must establish a factual basis by providing probative and reliable evidence that the employer's conduct towards her on December 6, 2010 was erroneous or abusive.¹⁶ She has submitted no such evidence and the Board finds that she did not establish a compensable factor of employment in this regard.

The record establishes that appellant received an employing establishment memorandum on December 6, 2010 informing her that she was detailed pending fact-finding of alleged inappropriate conduct. Appellant stated that she suffered a panic attack when she received the letter. The employing establishment controverted the claim by asserting that the actions taken towards her involved an administrative issue. Appellant has not established that the administrative action constituted error or abuse by her employer. Her supervisors reported that many of her peers had reported complaints about her conduct which was the reason why the nursing administration decided to perform fact-finding regarding the various allegations. Therefore, the supervisor's decision to detail appellant to another unit pending a fact-finding that procedure was reasonable under the circumstances. An employee's reaction to an administrative or personnel matter is not covered under FECA, unless there is evidence that the employing establishment acted unreasonably.¹⁷ Because appellant has not presented sufficient evidence that her supervisors acted unreasonably or that the employing establishment engaged in error or abuse, she has failed to identify a compensable work factor.

Appellant's allegations with regards to events that occurred prior to December 6, 2010 appear to indicate that she is alleging an injury produced by her work environment over a period longer than a single workday or shift. She, however, filed a traumatic injury claim and not an occupational disease claim (Form CA-2). Regardless, appellant did not submit sufficient evidence to establish her allegations as to time, place, what was said or any witnesses to any specific incident.¹⁸

Appellant made further allegations that she suffered a panic attack on July 9, 2010 when her supervisors presented her with counseling and informed her that there were several complaints against her from fellow staff members. On October 1, 2010 she requested that she have two days' advance notice before counseling, a synopsis of the content to be discussed and a union representative or peer of her choice present. In a November 26, 2010 report of contact,

¹⁴ *Roger W. Robinson*, 54 ECAB 846 (2003).

¹⁵ *Supra* note 5.

¹⁶ *See Donney T. Drennon-Gala*, 56 ECAB 469 (2005).

¹⁷ *See Alfred Arts*, 45 ECAB 530 (1994).

¹⁸ *See Parker*, *supra* note 10.

appellant also stated that she was harassed and provoked by Nurse M^cKinley and that Nurse Manager Nelson refused to intervene before the situation escalated.

The Board has held that disciplinary actions relate to administrative or personnel matters of the employing establishment, unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of FECA unless error or abuse is shown.¹⁹ Appellant's dissatisfaction with the way a supervisor performs duties or exercises discretion in assigning work is not compensable absent error or abuse is shown.²⁰ She did not submit evidence of error or abuse by her supervisors in handling her disciplinary matters. Therefore, appellant has not established a compensable employment factor in this regard.

Appellant also alleged that her work environment was hostile, that her supervisors threatened her with disciplinary action, put her on increased surveillance because she filed EEO complaints against them and assigned schedules based on friendship. She submitted no evidence corroborating her accusations. The Board has held that mere allegations, in the absence of factual corroboration, are insufficient to meet a claimant's burden of proof.²¹ Appellant's perceptions must be construed to be self-generated. Thus, she has failed to establish these allegations as factual.

Appellant provided no corroborating evidence or witness statements to establish that she was harassed by her supervisors.²² Rather, she has provided generally stated assertions of dissatisfaction with her superiors at work and these do not establish her allegations.²³ Mere perceptions of harassment or discrimination are not compensable; appellant must establish a basis in fact for the claim by supporting her allegations with probative and reliable evidence.²⁴

Evidence submitted by appellant after the final decision cannot be considered by the Board. As previously noted, the Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its decision.²⁵ Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.606 and 10.607.

As appellant has not established any compensable work factors, the Board need not consider the medical evidence of record submitted from Dr. Dunn and Dr. Kutner.²⁶ Thus, she

¹⁹ *Paul L. Stewart*, 54 ECAB 824 (2003).

²⁰ *Donney T. Drennon-Gala*, 56 ECAB 469 (2005).

²¹ *Bonnie Goodman*, 50 ECAB 139 (1998).

²² *See Parker*, *supra* note 10.

²³ *Supra* note 4.

²⁴ *Curtis Hall*, 45 ECAB 316 (1994); *Margaret S. Krzycki*, 43 ECAB 496 (1992).

²⁵ 20 C.F.R. § 501.2(c)(1).

²⁶ *Margaret S. Krzycki*, *supra* note 24.

failed to provide evidence to establish a compensable factor of employment and her claim was properly denied.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained an emotional condition on December 6, 2010 causally related to factors of her employment as a nurse

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated January 28, 2011 is affirmed.

Issued: December 9, 2011
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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