

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

N.A., Appellant)

and)

SOCIAL SECURITY ADMINISTRATION,)
MIDWEST REGION, Chicago, IL, Employer)

Docket No. 11-727
Issued: November 14, 2011

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 31, 2011 appellant filed a timely appeal from the October 7, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her claim for a work-related emotional condition. 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 to establish that she sustained an emotional condition in the performance of duty.

FACTUAL HISTORY

On November 17, 2009 appellant, then a 42-year-old contact representative/teleservice representative, filed an occupational disease claim alleging mental anguish, humiliation,

¹ 20 C.F.R. § 8101 *et seq.*

embarrassment and stress caused by sexual harassment, religious discrimination, retaliation and attacks by her supervisor.²

In support of her claim for stress-related conditions due to her employment, appellant provided a statement addressed to a Mr. Martin discussing what she believed caused or contributed to her stress.³ She alleged that she was sexually harassed and discriminated against because of her race and religion.⁴ Appellant claimed that coworkers were hostile and harassed her and that supervisors and managers treated her unfairly, excessively supervised her activities, checked on her, discussed leave with her, monitored her telephone time, denied her recognition and threatened loss of her job.

Appellant submitted an undated narrative identifying dates of treatment and treatment with Dr. Julieta Joson-Luna, an attending Board-certified family practitioner, a list of 2007 opinions involving Muslim employment discrimination, an e-mail to her attorney dated November 13, 2009 regarding a Christmas Party in her workplace, an undated request to decorate her cubicle with Christmas decorations, an application for leave dated November 13, 2009, a civil cover sheet dated April 11, 2005, an SF-50 form dated January 4, 2009, a Certification of Health Care Provider form and a medical note from Dr. Joson-Luna dated July 29, 2008.

In a February 19, 2010 letter, OWCP requested that appellant provide additional factual and medical evidence supporting her case within 30 days of the date of the letter.

In a March 3, 2010 statement, appellant provided further details about her allegations that she was sexually harassed and intimidated by her immediate supervisor and other managers while management did not respond to her complaints. She claimed that her requests for transfers, promotion and reasonable accommodation were improperly denied that sexual harassment was covered up and unfounded rumors were circulated about her. Appellant asserted that the work environment was abusive and that management was determined to get her to resign. She filed a lawsuit and an Equal Employment Opportunity (EEO) claim, followed by increased hostility towards her. Appellant disagreed with the handling of the lawsuit she filed in federal court and alleged that it was inappropriate for the employing establishment to allow her name to be published in relationship to the lawsuit. She alleged that her supervisor harassed her,

² On August 25, 2004 appellant filed an occupational disease case claiming that her mitral valve syndrome was aggravated by stress at work resulting from harassment by coworkers. OWCP accepted that her mitral valve syndrome had been aggravated by compensable work factors. The file is not clear what OWCP accepted as factual or as a compensable work factor as a basis for this acceptance. Under the same file, in an April 12, 2005 decision, OWCP denied that appellant's claimed emotional condition was related to compensable work factors. Appellant requested reconsideration of this decision and on February 23, 2006 modification was denied. On August 27, 2008 she filed another occupational disease claim alleging that her emotional condition was caused by sexual harassment and retaliation. OWCP denied the case on November 25, 2008 finding that appellant had not provided sufficient evidence to support her claim. The Board notes that these matters are not currently before the Board.

³ The statement was produced on February 12, 2009 in another context, but it appears that appellant wished to claim that the conditions and incidents described in the statement had contributed to her claimed stress-related condition.

⁴ Appellant claimed that at least two managers sexually harassed her by inappropriately staring at her.

yelled at her and called her a chronic complainer and dismissed her concerns and that coworkers teased and harassed her.⁵ Appellant's EEO complaints were either dismissed or still pending. She stopped work following the cardiac arrest by her mother on January 22, 2010. Appellant submitted additional documents related to the lawsuit she filed against the agency, her EEO complaints, requests for hardship transfer and e-mails with coworkers and various agency personnel. OWCP also received additional medical information discussing her conditions and treatment.

In a March 31, 2010 letter, appellant's unit supervisor, Sythera Pride-Paulus, noted that appellant had filed several EEO complaints, but each was unfounded. She denied that retaliation occurred or that appellant was verbally or physically attacked by management. Ms. Pride-Paulus denied appellant's other allegations but noted that she was not privy to the information in appellant's EEO files. To her knowledge, no aspect of appellant's job was stressful. Ms. Pride-Paulus advised that appellant was generally able to perform her job duties within expectations and had no performance or conduct issues other than an occasional outburst or failure to follow a work order. Documents were submitted to OWCP discussing an incident of November 13, 2009 when appellant was observed "making loud outbursts and using profanity." On December 31, 2009 appellant refused to take a call. A statement was submitted discussing appellant's request for additional leave under the Family Medical Leave Act.

In a June 2, 2010 decision, OWCP denied appellant's emotional condition claim on the grounds that she did not establish any compensable employment factors. It found that most of appellant's allegations were vague and that she did not submit adequate evidence to support that they occurred as alleged.

Appellant requested a review of the written record by an OWCP hearing representative. She submitted an additional copy of motions submitted by her attorney related to the EEO complaints as well as other information previously submitted from the internet, including Appendix B of 2007 opinions involving Muslim Employment Discrimination with analysis of this information.

In an October 7, 2010 decision, a hearing representative affirmed the June 2, 2010 decision.

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 her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA.⁶ On the other hand, the

⁵ Appellant alleged that a coworker stated in her presence that Muslims were terrorists and that another coworker stalked her.

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

disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or her frustration from not being permitted to work in a particular environment or to hold a particular position.⁷

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.⁸ 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.⁹ 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.¹⁰

To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors.¹¹ However, for harassment or discrimination to give rise to a compensable disability under FECA, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under FECA.¹²

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which she claims compensation was caused or adversely affected by employment factors.¹³ This burden includes the submission of a detailed description of the employment factors or conditions which she believes caused or adversely affected a condition for which compensation is claimed and a rationalized medical opinion relating the claimed condition to compensable employment factors.¹⁴

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

⁷ *Gregorio E. Conde*, 52 ECAB 410 (2001).

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

⁹ *William H. Fortner*, 49 ECAB 324 (1998).

¹⁰ *Ruth S. Johnson*, 46 ECAB 237 (1994).

¹¹ *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

¹² *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

¹³ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

¹⁴ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

factors of employment and may not be considered.¹⁵ 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.¹⁶

ANALYSIS

Appellant alleged that she sustained an emotional condition as a result of a number of employment incidents and conditions. OWCP denied her emotional condition claim on the grounds that she did not establish any compensable employment factors. The Board must initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of FECA. The Board notes that appellant's allegations do not pertain to her regular or specially assigned duties under *Culter*.¹⁷ Rather, appellant has alleged error and abuse in administrative matters and harassment and discrimination on the part of her managers and coworkers.

A number of appellant's allegations fall into the category of administrative or personnel actions. She alleged that she was wrongly denied transfer, promotion and reasonable accommodation requests, that her complaints were not acted upon by the employing establishment and that the employing establishment wrongly allowed her name to be published in connection with a lawsuit. While appellant made numerous allegations related to administrative actions of the employing establishment, she provided no probative evidence to support that these occurred as alleged, or that the employing establishment's actions were in error or abusive. She submitted some documents regarding her EEO complaints and a lawsuit she filed but she did not submit the final decisions on any of these actions. This information reiterates appellant's allegations without providing supporting probative evidence establishing her allegations. Since these allegations were not supported with probative reliable evidence, they have not been established as occurring as alleged and are therefore not compensable.

The Board notes that many of appellant's allegations involved supervisor duties. However, an employee's dissatisfaction with perceived poor management constitutes frustration from not being permitted to work in a particular environment or to hold a particular position and is not compensable under FECA. Mere disagreements or dislike of a supervisory or management action is not actionable, absent evidence of error or abuse.¹⁸ Appellant provided no probative evidence to support her belief that managers acted unreasonably in monitoring her work or otherwise checking up on her. A supervisor's job by its nature is to monitor and ensure that work is being done in a timely and proper manner. Appellant provided no evidence to support that managers were doing anything other than performing these duties.

¹⁵ See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

¹⁶ *Id.*

¹⁷ See *Lillian Cutler*, *supra* note 6.

¹⁸ See *Michael Thomas Plante*, 44 ECAB 510, 515 (1993).

Appellant alleged that her supervisor and other managers harassed her and discriminated against her. She claimed that they did not treat her equally, threatened her with loss of her job, yelled at her and called her a chronic complainer. Appellant claimed that at least two managers sexually harassed her, including by inappropriately staring at her. The majority of these allegations were not discussed in detail with specific dates, times and places, and none of the allegations were supported with probative evidence establishing their occurrence as alleged. As noted above, mere perceptions and feelings are not sufficient to find compensable employment factors when harassment and discrimination are alleged and a claimant must submit corroborating evidence to support such allegations.¹⁹

Appellant further alleged that coworkers harassed her by calling her names, spreading rumors and stalking her. However, she provided little specific information as to when these alleged incidents occurred and who was involved. With respect to claimed incidents that she did discuss in detail, appellant did not provide any probative evidence to support that these events occurred as alleged. She submitted no evidence to substantiate that any of the alleged incidents occurred. Therefore, appellant did not establish the occurrence of harassment or discrimination by coworkers.²⁰

For the foregoing reasons, appellant has not established any compensable employment factors under FECA and, therefore, she has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty.²¹

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 did not meet her burden of proof to establish that she sustained an emotional condition in the performance of duty.

¹⁹ See *supra* note 12.

²⁰ Appellant submitted additional evidence after the OWCP's October 7, 2010 decision, but the Board cannot consider such evidence for the first time on appeal. See 20 C.F.R. § 501.2(c).

²¹ As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; see *Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

ORDER

IT IS HEREBY ORDERED THAT the October 7, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 14, 2011
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