

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

P.J., Appellant

and

**DEPARTMENT OF THE ARMY, CORPUS
CHRISTI ARMY DEPOT, Corpus Christi, TX,
Employer**

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**Docket No. 11-200
Issued: September 6, 2011**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 27, 2010 appellant filed a timely appeal from a July 22, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP) which denied 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 established that she sustained an emotional condition in the performance of duty.

FACTUAL HISTORY

On February 9, 2010 appellant, then a 46-year-old supervisory production aircraft controller, filed an emotional condition claim alleging that on January 8, 2010 she suffered

¹ 5 U.S.C. § 8101 *et seq.*

emotional stress, anxiety and anxiety-migraine headaches as a result of receiving a notice of proposed removal. She stopped work on January 9, 2010. The employing establishment controverted appellant's claim.

By letter dated February 25, 2010, OWCP requested that the employing establishment respond to appellant's allegations. It asked that a knowledgeable supervisor comment on the accuracy of appellant's statements regarding her claim, discuss whether aspects of her job could be perceived as stressful, describe her position and physical requirements, and address whether she was generally able to perform the duties in accordance with expectations.

In a February 22, 2009 letter, the employing establishment stated that appellant did not provide sufficient medical evidence supporting her claim for anxiety-migraine headaches, attack and emotional stress. It also contended that she alleged administrative and personnel matters, rather than regular or specially assigned work duties, that were not compensable factors under FECA. The employing establishment contended that appellant's claim was a result of fear of removal from employment and that she did not sustain an injury in the performance of her duties. It provided a statement from Sue Scarlett, a human resource specialist, a position description, and the January 8, 2010 proposed removal letter.

In a February 17, 2010 statement, Ms. Scarlett reported that on December 10, 2009, January 8 and February 4, 2010 she was present in Dennis Williamson's office when he conducted an informational inquiry with appellant, and when he showed her the proposed letter of removal. Appellant appeared very composed, interacted appropriately and spoke in a normal tone of voice. Her speech was cogent and articulate and her demeanor was calm, controlled and rational. Ms. Scarlett also attended the February 4, 2010 reply meeting. Appellant appeared very professional, collected and composed.

By letter dated February 25, 2010, OWCP advised appellant that the evidence submitted was insufficient to establish her claim and requested additional information. It requested a detailed description of the employment-related conditions or incidents that she believed contributed to her illness, of the sources of stress outside of her employment and of the development of her claimed condition. It also requested additional medical evidence, which included medical records from all prior treatment and a comprehensive medical report from appellant's treating physician, which described her symptoms, results of examinations and tests, a firm diagnosis, treatment provided, the effect of treatment and a physician's opinion, with stated medical rationale, regarding whether her employment caused or contributed to her condition.

In a March 22, 2010 statement, appellant reported that on December 10, 2009 she was called into the office of Mr. Williamson and informed that she was under investigation for allegations of nepotism involving her half sisters. On January 8, 2010 she received a proposed removal letter from Mr. Williamson and she claimed she began experiencing an anxiety attack. Appellant requested leave for the rest of the day. On January 11, 2010 she sought medical treatment for her migraines, headaches, insomnia, nervousness, shaky hands and continuous anxiety attacks. Appellant stated that being removed from federal employment after 29½ years of dedicated and loyal service was detrimental to her health. She had worked at the employing establishment over half of her life and the thought of losing her job was detrimental to herself

and her family. Appellant further explained that the working conditions of attending daily high level meetings, working long hours and her dedication to her mission and goals were also detrimental to her health. She reported no stress outside of her federal employment and no experience with any situations in her personal or family life.

Appellant stated that she first noticed her illness on January 8, 2010 when she had a meeting in Mr. Williamson's office and received a proposed removal letter. Her condition worsened throughout the days, weeks and months, especially when she was contacted by the employing establishment or received notices, letters and requests for additional information. Appellant denied any prior emotional condition, was never treated by a psychiatrist or psychologist or hospitalized for an emotional condition prior to this incident.

In medical notes dated January 22 and February 11, 2010, Dr. John E. Schulze, a Board-certified family practitioner, confirmed that appellant was his patient. He excused her from work for the period January 11 to March 13, 2010 due to her condition.

In an April 12, 2010 decision, OWCP denied appellant's emotional condition claim finding the grounds that the evidence did not demonstrate that she sustained an emotional condition in the performance of duty. It found that she did not establish any compensable work factors.

On April 23, 2010 appellant submitted a request for reconsideration contending that the evidence she provided was not properly received by OWCP. She related that a January 8, 2010 work incident caused her extreme stress. Appellant reiterated that she had never experienced this type of medical problem prior to the January 8, 2010 employment incident. She resubmitted her March 22, 2010 personal statement and work excuse slips.

In a March 3, 2010 report, Dr. Schluzze stated that appellant had been under significant stress at work, which resulted in her inability to perform her duties in the workplace. Appellant was prescribed medication to allow her to function at home and for insomnia since the onset of her problems at work.

In an April 19, 2010 report, Dr. Schulze provided a history of appellant's medical treatment at his office. On January 11, 2010 he first examined her for headaches, vertigo, and nausea in response to problems at work, specifically that she was implicated in nepotism in her workplace. Appellant described feelings of betrayal by her employing establishment after many years of employment. Dr. Schulze observed that she appeared anxious and tense, unlike her previous visits and that her blood pressure was elevated. He prescribed medication for musculoskeletal headaches and anxiety. On January 26, 2010 appellant was again seen in Dr. Schulze office for complaints of anxiety and an inability to sleep. She obsessed about her years of service and the sense of shame and humility she felt at the allegations of nepotism levied against her. Appellant also expressed concern that her coworkers were talking about her and that she was ashamed to appear to have acted inappropriately in her employment. Her blood pressure was elevated and she appeared disheveled. On February 11, 2010 Dr. Schluzze noted that the hypnotic agents were ineffective in abating her insomnia. Appellant expressed an inability to return to work because she feared her coworkers would talk about her.

On March 11, 2010 Dr. Schluzé observed that appellant's blood pressure was at a significant level of risk, her insomnia had worsened, and she was reclusive to the point of avoiding family and friends. Appellant had begun to lose weight and became more reclusive since her last visit. When asked if she would harm herself, she responded that her husband needed her help because his health was also failing. Appellant again expressed embarrassment that her coworkers viewed her as acting inappropriately, which prevented her from returning to work.

On April 7, 2010 Dr. Schluzé examined appellant and observed that she had lost more weight and demonstrated lassitude. Appellant did, however, have good control of her blood pressure with medication. She had given up hope of clearing her name and resolved to leave her employing establishment. Appellant explained that she could not return to work in a demoted position due to the indignation she would experience in that demoted position. Dr. Schluzé did not expect that she would recover from being victimized and having her work history tarnished. He reported that this phenomenon was well documented in psychiatric journals and studies where workers were fired or demoted after years of employment and service to a company, which left them with a lifelong feeling of worthlessness and betrayal. Dr. Schluzé concluded that appellant demonstrated anxiety, depression, insomnia and anorexia in direct response to actions taken against her by her employing establishment during her tour-of-duty.

In a letter dated May 7, 2010, OWCP requested any additional information from the employing establishment regarding appellant's claim.

In a May 27, 2010 letter, the employing establishment responded that appellant signed a last chance agreement which stated that she would be changed from a supervisory position to a lower grade nonsupervisory position. It accommodated her despite equivocal medical documentation. The employing establishment also pointed out that Dr. Larry Grabhorn, the employing establishment's occupational health physician, reviewed Dr. Schluzé's April 19, 2010 medical report and concluded that there was no well-documented reason for why appellant could not return to work. It pointed out that appellant's elevated blood pressure had been effectively controlled by medication. The employing establishment also noted that the only reason for why she did not return to work was the fact that she felt ashamed in being demoted.

By decision dated July 22, 2010, OWCP denied modification of appellant's claim, finding that she failed to establish that she sustained an emotional condition as alleged. It found that the claimed notice of removal and demotion to a lower grade were personnel and administrative matters, which were not compensable employment factors.

LEGAL PRECEDENT

To establish that she sustained an emotional condition causally related to her employment, appellant must submit: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to her condition; (2) rationalized medical evidence establishing that she has an emotional condition or psychiatric

disorder; and (3) rationalized medical opinion evidence establishing that her emotional condition is causally related to the identified compensable employment factors.²

Workers compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. These 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 his regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA.³ On the other hand, the disability is not covered where it results from such factors as an employee's fear of reduction-in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position.⁴

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.⁵ 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 function, coverage will be afforded.⁶ 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.⁷

ANALYSIS

Appellant alleged that she suffered emotional stress, anxiety and migraines commencing on January 8, 2010. She attributed her emotional condition to being informed that she was under investigation on December 10, 2009 for nepotism and receiving a notice of proposed removal on January 8, 2010. The Board finds that she did not establish a compensable factor of employment.

Appellant did not attribute her emotional condition to her regular employment duties under *Cutler*.⁸ She indicated that she had a long and successful career at the employing establishment, which she did not want to end. Instead, appellant attributed her condition to two meetings with management at which she was informed that she was under investigation for

² *K.W.*, 59 ECAB 271 (2007); *Kathleen D. Walker*, 42 ECAB 603 (1991).

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

⁴ *Gregorio E. Conde*, 52 ECAB 410 (2001).

⁵ See *Matilda R. Wyatt*, 52 ECAB 421 (2001); *M.C.*, Docket No. 10-1628 (issued June 8, 2011).

⁶ See *William H. Fortner*, 49 ECAB 324 (1998). See also *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

⁷ *M.D.*, 59 ECAB 211 (2007); *Ruth S. Johnson*, 46 ECAB 237 (1994).

⁸ *Cutler*, *supra* note 3.

nepotism and showing favoritism to her half sisters, and at which she was given a proposed removal letter for these actions. In a February 17, 2010 statement, the employing establishment confirmed that she met with Mr. Williamson on December 10, 2009 and January 8, 2010. Appellant was advised that she was under investigation and given a proposed letter of removal. The Board notes that her allegations pertain to the administrative actions taken by management personnel at the employing establishment. As noted, however, administrative or personnel matters are not considered to be employment factors covered under FECA unless the record reveals error or abuse on the part of the employing establishment.⁹ It is well established that investigations into possible employee wrongdoing and discipline pertain to actions taken in an administrative capacity that do not relate to the regular or specially assigned duties of the employee.¹⁰ Appellant did not allege that Mr. Williamson acted in error or abuse. The Board finds that the record is void of any evidence establishing that the administrative and personnel actions taken by her employing establishment were in error and are, therefore, not considered factors of employment compensable under FECA.

Appellant stated that she was worried that her coworkers would talk about her if she returned to work in a lower position, and that she was ashamed to appear to have acted inappropriately. The Board has established, however, that fear of employee gossip is not a compensable employment factor because it is a personal frustration that is not related to the actual performance of a claimant's job duties.¹¹

On appeal, appellant contended that the medical evidence established that her medical condition was work related and that her injury was caused by the employing establishment's actions. The Board has held, however, that OWCP is not required to evaluate medical evidence if appellant has not established a compensable factor of employment. Appellant must first prove her allegation of administrative error or abuse to show that the claim falls within the scope of FECA.¹² Appellant has failed to establish such error or abuse in this case. Thus, she did not submit sufficient evidence to establish a compensable factor of employment.

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 establish that she sustained an emotional condition in the performance of duty.

⁹ *Cyndia R. Harrill*, 55 ECAB 522 (2004); see also *Matilda R. Wyatt*, *supra* note 5.

¹⁰ *Jeral R. Gray*, 57 ECAB 611 (2006); *Joe M. Hagewood*, 56 ECAB 479 (2005).

¹¹ *Mary A. Sisneros*, 46 ECAB 155 (1994); *Gracie A. Richardson*, 42 ECAB 850 (1991).

¹² *L.S.*, 58 ECAB 249 (2006).

ORDER

IT IS HEREBY ORDERED THAT the July 22, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 6, 2011
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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