

FACTUAL HISTORY

On April 22, 2010 appellant, a 42-year-old lead educational technician,² filed a claim for workers' compensation benefits alleging that she developed anxiety and depression, as well as a host of physical ailments, as a result of unfair treatment and retaliation at work.

Appellant's supervisor, the director of the employing establishment, responded to the emotional injury claim:

“Although we have tried to accommodate [appellant's] requests, explain policies and answer her concerns, we have had little success helping her to feel more comfortable. [Appellant] has made accusations against me and the management staff that were based on her opinion rather than facts. She has been unwilling to accept any explanations, has repeatedly accused other staff of lying and has caused much stress in coworkers.”

The director added that they had tried hard to provide a supportive environment, but that most of appellant's stress resulted from her misinterpretation of others' motives. Appellant often challenged management decisions, but because she did not have complete information and often had incorrect information, she formed a perception of unfairness and refused to listen to explanations. For example, on October 8, 2009 the director relocated an infant to appellant's room due to a staffing shortage. The infant filled a vacancy in appellant's room, so the action did not increase her expected workload. Appellant protested strongly that the child could have been moved to a different room. When the director tried to explain that the decision was in the best interest of the child and the overall program operation, appellant refused to accept the explanation.

Another incident arose on August 19, 2009, when the director relocated an infant to appellant's room to maintain required staff-child ratios. Appellant questioned several staff in an attempt to determine whether the move was justified. She then told the director that she knew there were only seven children in the playground area, but she gave conflicting accounts of how she obtained this information. Appellant accused staff of lying and falsifying records. She did not know that two of the children were indoors with another caregiver: “This is just one example of how [appellant] used incorrect information to form her opinion of unfair treatment.”

The director explained that it was not always possible to approve annual leave requests because ratios had to be maintained. Nonetheless, appellant's requests were almost always approved. The director added that every effort was made to listen to and address her concerns: “We have clarified our leave procedures to eliminate any confusion about how leave is granted. We've also clarified the procedures for requesting release time for special installation programs. I was becoming concerned that the efforts that were made to satisfy [her] complaints were being perceived by other staff as favoritism toward her.” The director stated that appellant's mood swings, irritability and misinterpretations made it difficult for many staff to work with her and appellant had disagreements with some parents. These were seen as personality issues and therefore not recorded as conduct problems. Though a few of appellant's outbursts were close to

² Appellant cared for infant children from 6 weeks to 12 months of age.

insubordination, the director did not write a counseling statement because she knew that appellant was having medical issues and therefore made allowances.

The director explained that although there were sometimes staffing shortages, staff-child ratios were never exceeded. The staff-child ratio for appellant's current age group was 1:4, so she was never responsible for more than four children.

In an October 15, 2009 memorandum, the director expressed concern about appellant's ability to relate to others. Appellant had increasingly made accusations that did not appear to have merit and she did not seem to be able to accept explanations or consider other people's positions: "It is difficult to help her feel comfortable because she seems to process occurrences with the view that other are trying to pick on her."

Appellant stated that she had documented the unfair treatment by keeping a very detailed journal with many events and incidents over the years. She voiced her concerns with the chief of Child and Youth Services between 2006 and 2010. Appellant met with the union representative between 2007 and 2010. In October 2009, she met with the installation commander and provided him with the documentation. He scheduled a meeting with everyone on November 18, 2009. Appellant explained that she received unfair treatment on a regular basis and that it was her work environment that caused her medical issues.

In response to questions posed by OWCP, appellant stated that she was not given adequate time on the job to prepare lesson plans: "I constantly had to take the material home to accomplish the tasks." Around July 2008, the director stopped allowing all lesson plans and children's folders to be taken out of the center. It was at that point, appellant explained, that she began falling when it came to completing her tasks in a timely manner. She stated that the deadline for completing the lesson plans and the children's folders, without adequate time to complete them, began to become stressful.³

Appellant offered numerous examples of the issues that led to her medical concerns. The details are too lengthy to repeat here in their entirety. A number of the incidents involved matters of leave and timekeeping. In May 2006, the director questioned why appellant was out longer than another employee who had the same surgery. In August 2006, appellant was informed that she would not be able to take her daughter to college and was told, "I guess you will have to put her on a plane." In early 2007, after a parent was rude and nasty to her, the chief advised appellant to simply tell the parents that "you have medical issues and a lot going on in your life." On June 24, 2008 appellant met with the chief about the director's always putting infants in her care when there was adequate staff "just walking around." On February 11, 2009 when she asked why she was not told sooner about a telephone call, the clerk stated, "That's how the cookie crumbles." On March 2, 2009 appellant was required to report to work on a two-hour delay due to inclement weather, but four other workers, who lived a lot closer, did not show up and were not charged leave. On March 9, 2009 appellant indicated that she would be filing a grievance over trying to get her e-mail account on the global listing. The next day, she needed to work on a lesson plan and requested relief. Management sent relief to another room that already

³ According to her evaluation reports, appellant's duties included preparing and implementing developmentally appropriate daily activities.

had three teachers and just a few children. On March 11, 2009 appellant was told to complete her mandatory computer information awareness training at home. In April 2009, the director told her that she was low in ratio and could have done lesson plans. Appellant disputed this and asked to see the sign-in sheets. "I started crying and said, 'Suzanne I was on vacation you have my leave slips so why are you doing this to me? I am unfortunately forced to take my work home and you are trying to write me up for this?'" On May 19, 2009 she felt that the director placed more infants in her care because she had spoken to the director about being treated unfairly. In June 2009, appellant stated that the trainer harassed her about not turning in her lesson plans, but she had turned them in on May 28, 2009. On October 8, 2009 an infant was again put in her care when there was more than enough staff in another room. Appellant stated that the director yelled at her and told her she was not a team player. On November 6, 2009 the director had the base e-mail turned off. On November 25, 2009 all other full-time employees were dismissed early, but appellant was not informed until approximately two hours from quitting time. On November 27, 2009 the director told her to take Moral, Welfare and Recreation classes at home and her husband started complaining about how having to work from home was interfering with family time. Appellant's name was not put on the birthday list for January 2010. On February 4, 2010 the director told appellant, "I cannot believe they are doing Bible study for stress, but you seem to like it." Appellant felt this was an unprofessional thing to say. On February 10, 2010 all other full-time employees were dismissed at 2:00 p.m. due to bad weather "but I wasn't informed or allowed to leave." On February 12, 2010 all government employees were authorized to leave 59 minutes early, but she was not informed until all the employees had left. On February 17, 2010 the director told appellant she needed to take an hour's leave for her early departure on February 12, 2010. On February 19, 2010 when appellant informed the director of Moral, Welfare and Recreation that her physician was writing up paperwork for Family Medical Leave due to workplace stress, he stated that he stood behind management and asked if she understood that she was going to be fired in September 2011. She stated that this added to her stress and health issues.

Appellant explained that the retaliation occurred on October 9, 2009. She notified the chief that she was filing a complaint against the director: "This was due to the fact that [appellant] was continuing to take children out of the care of other caregivers that allowed them to have less kids in their room while increasing the number of children in my care." The chief recommended that she give the director the courtesy of informing her of the complaint. Later that morning, the director called appellant to her office to give her a Memorandum for Record regarding staff teamwork and attitude. "It was dated 8th October but given to me on the 9th of October. It is my true belief that Mrs. Susan called Mrs. Susanne and gave her a head's up that I wanted to meet with her. I felt that the memorandum was a form of retaliation."

On April 6, 2010 a licensed professional counselor reported that she first saw appellant on December 15, 2009 with a complaint of suffering emotional and physical problems after a protracted period of work-related stress. "According to my client, the distress resulted from unfair treatment from certain coworkers."⁴ Appellant's initial diagnosis was anxiety disorder not otherwise specified. After psychological testing, she was given a principal diagnosis of dysthymic disorder, late onset. The counselor reported that appellant was consumed with

⁴ Appellant crossed out "certain coworkers" and wrote in "management."

questioning why this had happened to her, what she could have done differently, what could be wrong with her that she was not able to resolve the problem. This resulted in excessive feelings of self-recrimination, guilt and distrust of others. The ruminations also suggested that she might be experiencing paranoid ideation, the feeling that others were against her. Appellant's depressive symptoms became more severe through the course of therapy, to the point that she heard voices telling her to take her life. She was then diagnosed with major depressive disorder, severe with psychotic features. Appellant stated that she did not want to die and that she knew the voices were not real.

In a decision dated June 14, 2010, OWCP denied appellant's claim for workers' compensation benefits. It found that she failed to establish a compensable factor of employment. OWCP found that appellant submitted no evidence that management acted improperly and explained that her disagreement with or dislike of a management action or with the manner in which a supervisor exercised her discretion was not compensable.

On November 17, 2010 following a telephone conference, an OWCP hearing representative affirmed the denial of appellant's claim for workers' compensation benefits. The hearing representative found that the record did not establish error in the denial of leave requests, did not establish that she suffered an increased workload, did not establish that she was improperly denied training and did not establish unfair treatment or a hostile work environment.

LEGAL PRECEDENT

FECA provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of her duty.⁵ When an employee experiences emotional stress in carrying out her employment duties or has fear and anxiety regarding her ability to carry out her duties and the medical evidence establishes that the disability resulted from 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 her emotional reaction to a special assignment or requirement imposed by the employer or by the nature of her work. By contrast, there are disabilities having some kind of causal connection with the employment that are not covered under workers' compensation because they are not found to have arisen out of employment, such as when disability results from an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or to hold a particular position.⁶

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 employer.⁷ The Board has held that actions of an employer which the employee characterizes as harassment or discrimination may constitute a factor of employment giving rise to coverage under FECA, but there must be some evidence that harassment or discrimination did in fact occur. As a rule,

⁵ 5 U.S.C. § 8102(a).

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

⁷ *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566, 572-73 (1991).

allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.⁸ 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.⁹ The primary reason for requiring factual evidence from the claimant in support of her allegation 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.¹⁰

An employee seeking benefits under FECA has the burden of proof to establish that a specific event, incident or exposure occurring at the time, place and in the manner alleged caused an injury.¹¹

Causal relationship is a medical issue¹² and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant,¹³ must be one of reasonable medical certainty,¹⁴ and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.¹⁵

ANALYSIS

The Board has carefully reviewed the evidence submitted and finds that appellant has established a compensable factor of employment. Responding to questions posed by OWCP's initial development letter, she stated that she experienced emotional stress in trying to complete her lesson plans. This was a requirement imposed by appellant's employer. It does not matter whether appellant was given adequate time on the job to prepare these plans: she did not find the time to complete them at work and took the material home until that was no longer allowed.

⁸ 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).

⁹ *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).

¹⁰ *Paul Trotman-Hall*, 45 ECAB 229 (1993) (concurring opinion of Michael E. Groom, Alternate Member).

¹¹ *John J. Carlone*, 41 ECAB 354 (1989).

¹² *Mary J. Briggs*, 37 ECAB 578 (1986).

¹³ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

¹⁴ See *Morris Scanlon*, 11 ECAB 384, 385 (1960).

¹⁵ See *William E. Enright*, 31 ECAB 426, 430 (1980).

From that point forward she began falling behind. Appellant found the pressure to meet the deadlines stressful. This was stress in carrying out her employment duties. This was anxiety regarding her ability to carrying out her duties in a timely fashion. The Board therefore finds that appellant has established a compensable factor of employment, that is, an aspect of her employment that falls within the scope of workers' compensation.

Appellant, however, must do more than establish a compensable factor of employment. The medical evidence must establish that this particular factor of employment caused an injury. Appellant has submitted no medical opinion evidence from a qualified physician who attributes her diagnosed emotional condition specifically to the stress of preparing lesson plans and who supports that opinion with sound medical reasoning. The lack of any supporting medical opinion evidence means that she has failed to establish the critical element of causal relationship. Appellant has not established that the stress she experienced in preparing her lesson plans was responsible for her diagnosed emotional condition. She has therefore not met her burden of proof to establish that she sustained an emotional injury in the performance of duty.

This is not the focus of appellant's claim for workers' compensation benefits.¹⁶ Appellant made clear that she developed anxiety and depression, as well as a host of physical ailments, as a result of unfair treatment and retaliation at work. Unfair treatment is the crux of her claim for compensation, the recurring theme that connects all the events and incidents that she detailed in her journal over the years. This was not unfair treatment by appellant's coworkers. Appellant corrected the licensed professional counselor's report on this point. This was unfair treatment by management and largely by her supervisor, the director of the employing establishment.

The problem with such a claim is that, as a general rule, it is not one that is covered by workers' compensation. An emotional reaction to an administrative or personnel action, though undeniably related in some way to appellant's federal employment, does not usually fall within the scope of FECA. Coverage extends to injuries arising out of and in the course of one's employment. Unlike caring for infants or the deadlines appellant faced when preparing lesson plans, the director's denial of a leave request or decision to relocate a child from one room to another is not considered a function of appellant's duties. Such matters are administrative and as such, are not generally compensable.

The Board recognizes an exception when the claimant submits proof of error or abuse in an administrative or personnel action. It is not enough for appellant to believe or suspect that management is treating her unfairly. She must submit proof, some independent and objective evidence to establish a factual basis for her contentions. That is what appellant's claim lacks.

There is no question that appellant truly believes that management has treated her unfairly for a period of years. The issue of leave is a recurring one. There is no evidence that the director acted improperly in any of those matters. Sometimes appellant's reaction was to a remark that someone made -- about being out longer than another employee who had the same surgery or about having to put her daughter on a plane or about offering Bible study for stress --

¹⁶ Stress from preparing lesson plans was not so much volunteered by appellant as it was solicited by the broad questions posed by OWCP's development letter.

but the Board finds nothing in these remarks that would rise to the level of abuse. Appellant often implicated the director's motives, but this was nothing more than supposition. The alleged retaliation that occurred on October 9, 2009 has no basis in fact. There is, at least, no proof in the record that the chief gave the director a head's up that appellant was coming to meet with her and that the director drafted and predated a Memorandum of Record to retaliate against appellant. It no doubt seemed that way to appellant; she stated that it was her true belief, but matters of belief or perception are no basis for the payment of workers' compensation benefits.

The director has explained that most of appellant's stress resulted from misinterpreting the motives of others, often because she did not have sufficient information. The licensed professional counselor noted that appellant was consumed with questioning herself, resulting in excessive feeling of self-recrimination, guilt and distrust of others. The ruminations suggested that she might be experiencing paranoid ideation, the feeling that others were against her. This highlights the need for appellant -- for any claimant who makes allegations against her superiors based on feelings or perceptions of unfair treatment -- to substantiate those allegations with probative and reliable evidence. Allegations alone are not sufficient. Because appellant has not submitted probative and reliable evidence to substantiate her allegations of unfair treatment by management, she has not shown that the exception to the general rule applies. She has not shown that workers' compensation should be extended to cover her emotional reaction to any of the administrative matters she has implicated.

Having to prepare lesson plans in a timely manner stands as the only compensable factor of employment established by the evidence in this record. Appellant has not met her burden to establish the element of causal relationship, to show that her diagnosed emotional condition resulted from this particular stress. For this reason, the Board finds that appellant has not met her burden of proof. The Board will affirm OWCP's November 17, 2010 decision affirming the denial of her claim for workers' compensation benefits.

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 injury in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the November 17, 2010 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: September 23, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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