

FACTUAL HISTORY

Appellant, then a 58-year-old security screener, filed a September 22, 2010 claim (Form CA-1) for physical and psychological injuries that occurred on that day. She claimed that she had a panic attack and suffered from chest pain due to a meeting with her supervisor, Bill Lewis.

Appellant submitted several medical documents and statements to OWCP. A September 22, 2010 statement titled “manager comments and contributing factors,” signed by Frank Malewich stated that appellant “complains of chest pains,” that an emergency medical technician (EMT) was notified, and that appellant “denies further medical attention after EMT’s evaluations.” The witness statement issued on the same day by Anthony Guiliano, the lead transportation security officer, stated that appellant “grab[bed] her chest and said call for medical help, and then said call her husband.” A witness statement from Gladys Crespo, a transportation security officer, described that on September 22, 2010 “after a few minutes I was in D4, STSO Bill Lewis walk[ed] in and started talking with [appellant], she seem[ed] very upset ... about 1800 or 1825 she started having like a panic attack and having pain in her chest.” Appellant also submitted a recovering employer’s limited-duty assignment form dated October 12, 2010 to OWCP.

In a September 23, 2010 report, Dr. Albert Scublinsky, a psychiatrist, advised that appellant had visited his office because of her recurrent panic attacks and a relapse of her major depressive disorder. He noted that appellant had been severely traumatized and Dr. Scublinsky recommended that she remain out of work for four weeks.³

In a December 10, 2010 letter, OWCP advised appellant that the information she had submitted was insufficient to establish her claim. It requested that she describe any undue stress to which she attributed her condition, whether the September 22, 2010 meeting was the only instance of occurrence, and address her preexisting depressive disorder and whether she took any medication for it, as well as other sources of stress in her life outside of the workplace. OWCP also requested she submit a narrative medical report from her attending physician.

Appellant submitted a December 16, 2010 medical report from Dr. Scublinsky, who diagnosed major depressive disorder and recurrent panic attacks. Dr. Scublinsky stated that appellant’s condition was the consequence of “very inappropriate and insulting behavior by her supervisor,” which caused her to develop panic attacks, with symptoms of chest pain, racing heart beat, dizziness and breathlessness. He noted that appellant had been under his care since March 2005. Dr. Scublinsky concluded that appellant’s condition “is caused, exacerbated and worsened by stress and this work incident caused emotional distress and anxiety and precipitated the symptoms.”

In a January 10, 2011 decision, OWCP denied appellant’s claim for an emotional condition finding that she failed to establish that the September 22, 2010 meeting constituted a compensable factor.

³ Other medical documents include an undated attending physician’s report, and a duty status report dated August 4, 2010.

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. 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 her frustration from not being permitted to work in a particular environment or to hold a particular position.⁴

An employee's emotional reaction to administrative or personnel matters generally falls outside the scope of FECA.⁵ Although related to the employment, administrative and personnel matters are functions of the employer rather than the regular or specially assigned duties of the employee.⁶ However, to the extent the evidence demonstrates that the employing establishment either erred or acted abusively in discharging its administrative or personnel responsibilities, such action will be considered a compensable employment factor.⁷

In cases involving emotional conditions, the Board has held that when working conditions are alleged as 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. 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.⁸

Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a basis in fact for the claim by supporting her allegations with probative and reliable evidence.⁹

⁴ *Lillian Cutler*, 28 ECAB 125 (1976).

⁵ See *Andrew J. Sheppard*, 53 ECAB 170, 171 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); see also *Matilda R. Wyatt*, 52 ECAB 421, 423 (2001).

⁶ *David C. Lindsey, Jr.*, 56 ECAB 263, 268 (2005).

⁷ *Id.*

⁸ *David Apgar*, 57 ECAB 137 (2005).

⁹ *Kathleen D. Walker*, 42 ECAB 603 (1991).

ANALYSIS

The Board finds that appellant has not established that she sustained an emotional condition in the performance of duty on September 22, 2010. Appellant did not submit sufficient factual evidence to establish a compensable incident of employment.

Appellant did not allege that performance of her regular job duties or special assigned duties caused her alleged emotional condition under *Cutler*. Rather, she alleged that her emotional condition resulted from a meeting with her supervisor on September 22, 2010. Appellant did not provide specific detail regarding any conversation with her supervisor that day. The Board has held that an administrative or personnel matter may be a factor of employment where the evidence discloses error or abuse by the manager or supervisor.¹⁰ The Board has held that not every ostensibly abusive or threatening statement uttered in the workplace will give rise to coverage under FECA.¹¹ The witness statements of record noted only that a supervisor spoke to appellant, and she sustained a panic attack thereafter. None of the witness statements provide any detail as to what the discussion entailed. There is no description of what was stated during appellant's meeting with Mr. Lewis. Furthermore, appellant did not submit any statement addressing what transpired on that day. Absent such evidence, the Board cannot find a factual basis for error or abuse on the part of Mr. Lewis on September 22, 2010.

OWCP notified appellant of this deficiency in her claim, but she failed to submit any responsive statement. While appellant's attending physician referred to the exchange as the supervisor's "very inappropriate and insulting behavior," he was not present at the meeting and his depiction relies on appellant's representations, which are not of record. Without any other corroborating evidence describing the incident alleged to have caused her emotional condition, appellant has failed to establish a compensable factor of employment.

CONCLUSION

Appellant failed to establish that she sustained an emotional condition in the performance of duty on September 22, 2010.

¹⁰ *Pamela D. Casey*, 57 ECAB 260 (2005).

¹¹ *Fred Faber*, 52 ECAB 107, 109 (2000).

ORDER

IT IS HEREBY ORDERED THAT the January 10, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 29, 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