

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

J.M., Appellant

and

**U.S. POSTAL SERVICE, NORTHTOWN POST
OFFICE, Chicago, IL, Employer**

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**Docket No. 12-370
Issued: July 13, 2012**

Appearances:

Alan J. Shapiro, Esq., for the appellant

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 December 13, 2011 appellant, through her attorney, filed a timely appeal from decisions of the Office of Workers' Compensation Programs (OWCP) dated July 8 and October 28, 2011 that denied her claim. Pursuant to the Federal Employees' Compensation Act¹ (FECA) 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 causally related to factors of her federal employment.

On appeal, appellant's attorney contends that the decisions are contrary to fact and law.

¹ 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On March 8, 2011 appellant, a 44-year-old part-time sales service associate, filed an occupational disease claim asserting work-related stress. She stopped work on March 18, 2011. A March 1, 2011 disability slip with an illegible signature indicated that she could not work due to stress at work.

By letter dated April 5, 2011, OWCP informed appellant of the evidence needed to support her claim. In an April 13, 2011 statement, appellant asserted that she sustained chest pain, shaking, sweating, fear of going crazy, hot and cold flashes, tingling in her arms, legs and feet, choking, anxiety, dizziness and blurred vision due to employment factors. She identified these as not having a time card for months after returning to work, that she was sent to clerk training and to various places where no one seemed to know why she was there, she had no insurance, was picked on by her supervisors, had no work or worked part time.

In a February 24, 2011 report, Dr. Nayyar Afroz, a Board-certified psychiatrist, diagnosed bipolar disorder and post-traumatic stress disorder. He stated that appellant had recently returned to work after winning a case and had problems with a supervisor who was verbally abusive. Appellant submitted a February 28, 2011 report of Andrius E. Hicks, M.A., and a physician's certification for a Family and Medical Leave Act application in which Dr. Bill Gillard, Board-certified in family medicine, and Dr. Afroz diagnosed bipolar disorder and advised that appellant could not work from March 4 to June 4, 2011. In a May 20, 2011 report, Susan Pelton, Ph.D., advised that appellant had been attending a mental health clinic off and on since September 2008. A June 3, 2011 report with an illegible signature indicated that appellant was under a doctor's care for work-related stress and could not work.

On June 14, 2011 the employing establishment controverted the claim. In a June 11, 2011 statement, Theresa Starr, an employing establishment supervisor, advised that appellant was reinstated in August 2010 after five years following her removal for poor attendance. Appellant filed a claim regarding the dismissal and was returned to work.² Ms. Starr indicated that, even though appellant wanted to work an eight-hour shift, she was hired as a four-hour worker and her attendance had been very poor since returning to duty. She stated that appellant did not inform her of stress until filing the claim.

By decision dated July 8, 2011, OWCP denied the claim finding that appellant did not establish a compensable factor of employment.

Appellant requested reconsideration and submitted statements dated July 15 and October 10, 2011 in which she asserted that she was unfairly treated and harassed on the workroom floor by employing establishment supervisors, was forced to work in a hostile and unsafe work environment, had to go to various places such as the main post office to get an employee identification badge and to a refresher course, was only given part-time hours, and that the employing establishment did not honor her arbitration decision. She alleged that she was

² Appellant apparently filed a claim with the Merit Systems Protection Board regarding her dismissal. A copy of the decision is not in the record.

improperly given notices of absence and called for investigative interviews by the employing establishment, because she was unable to respond due to her psychiatric illness.

In reports dated July 14 and September 8, 2011, Dr. Gillard diagnosed bipolar illness, anxiety, psychosis and post-traumatic stress disorder. He stated that appellant could not tolerate work stress, such as supervisor's demands, time lines and complex tasks because she became easily frustrated and did not relate well to others in the workplace. Dr. Gillard advised that she was disabled from work.

The record includes a number of earnings and leave statements, five-day absence notices dated March 10 and July 18, 2011 indicating that appellant had not furnished the employing establishment with proper documentation of her absences and March 30 and August 23, 2011 notices of investigative interviews.

On September 2, 2011 Ms. Starr stated that she disagreed with appellant's allegations. She noted that since January 2011 appellant's attendance had been bad, and the organization had a need to question her about this.

In a merit decision dated October 28, 2011, OWCP denied modification of the prior decision.

LEGAL PRECEDENT

To establish her claim that she sustained an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that she has an emotional or stress-related disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her stress-related condition.³ If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor.⁴ 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.⁵

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,⁶ the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under FECA. There are situations where an injury or illness has some connection with the employment but nevertheless does not come within

³ *Leslie C. Moore*, 52 ECAB 132 (2000).

⁴ *Dennis J. Balogh*, 52 ECAB 232 (2001).

⁵ *Id.*

⁶ 28 ECAB 125 (1976).

coverage under FECA.⁷ When an employee experiences emotional stress in carrying out his or her employment duties, and the medical evidence establishes that the disability resulted from an 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 results from his or her emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of the work.⁸ Allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.⁹ Where the claimant alleges compensable factors of employment, he or she must substantiate such allegations with probative and reliable evidence.¹⁰ Personal perceptions alone are insufficient to establish an employment-related emotional condition.¹¹

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.¹² Where 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.¹³

For harassment or discrimination to give rise to a compensable disability, there must be evidence introduced which establishes that the acts alleged or implicated by the employee did, in fact, occur. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. A claimant must establish a factual basis for his or her allegations that the harassment occurred with probative and reliable evidence.¹⁴ With regard to emotional claims arising under FECA, the term "harassment" as applied by the Board is not the equivalent of "harassment" as defined or implemented by other agencies, such as the EEOC, which is charged with statutory authority to investigate and evaluate such matters in the workplace. Rather, in evaluating claims for workers' compensation under FECA, the term "harassment" is synonymous, as generally defined, with a persistent disturbance, torment or persecution, *i.e.*, mistreatment by coemployees or workers. Mere perceptions and feelings of harassment will not support an award of compensation.¹⁵

⁷ See *Robert W. Johns*, 51 ECAB 137 (1999).

⁸ *Lillian Cutler*, *supra* note 6.

⁹ *J.F.*, 59 ECAB 331 (2008).

¹⁰ *M.D.*, 59 ECAB 211 (2007).

¹¹ *Roger Williams*, 52 ECAB 468 (2001).

¹² *Charles D. Edwards*, 55 ECAB 258 (2004).

¹³ *Kim Nguyen*, 53 ECAB 127 (2001).

¹⁴ *James E. Norris*, 52 ECAB 93 (2000).

¹⁵ *Beverly R. Jones*, 55 ECAB 411 (2004).

ANALYSIS

The Board finds that appellant did not meet her burden of proof to establish that she sustained a stress-related condition in the performance of duty causally related to factors of her federal employment.

Appellant has not attributed her emotional condition to the performance of her regular work duties or to any special work requirement arising from her employment duties under *Cutler*.¹⁶ Rather, her claim pertains to administrative actions that occurred after her return to work in August 2010 following a five-year absence. Appellant alleged that she was harassed and treated in an abusive manner by management.

Generally, actions of managers or supervisors in administrative or personnel matter, unrelated to the employee's regular or specially assigned work duties, do not fall within coverage of FECA.¹⁷ Absent evidence establishing error or abuse, a claimant's disagreement or dislike of such a managerial action is not a compensable factor of employment.¹⁸ The Board finds that appellant's allegations that she was improperly required to go to the main post office to secure an identification badge and to attend training at another location were reasonable administrative functions. Appellant did not submit sufficient evidence to establish error or abuse in these matters. Employing establishment management also explained that when she returned to work in August 2010, it was on a part-time basis. Appellant submitted no evidence regarding her general allegation that she had no insurance or evidence that insurance was denied after her return to work. In fact, the record contains earnings and leave statements documenting deductions for health insurance. As to appellant's allegation that the employer did not honor an arbitration decision, no copy of the decision was submitted to the record. She submitted insufficient evidence to substantiate that she was not given a time card or that its absence was error.

Appellant also asserted that she was verbally abused by supervisors and managers. While verbal altercations, when sufficiently detailed by the claimant and supported by the evidence, may constitute compensable employment factors.¹⁹ In this case, appellant submitted no evidence to support her claim of verbal abuse, and thus did not establish a factual basis for her allegation.²⁰

Generally, complaints about the manner in which a supervisor performs his or her duties or the manner in which a supervisor exercises his or her discretion fall, as a rule, outside the scope of coverage provided by FECA. This principle recognizes that a supervisor or manager in general must be allowed to perform his or her duties and employees will, at times, dislike the actions taken. Mere disagreement or dislike of a supervisory or managerial action will not be

¹⁶ See *James E. Norris*, *supra* note 14.

¹⁷ *J.C.*, 58 ECAB 594 (2007).

¹⁸ *Donney T. Drennon-Gala*, 56 ECAB 469 (2005).

¹⁹ See *J.F.*, 59 ECAB 331 (2008).

²⁰ See *T.G.*, 58 ECAB 189 (2006).

compensable, absent evidence of error or abuse.²¹ Ms. Starr explained that discussions and correspondence with appellant were regarding such supervisory duties as monitoring attendance. The record contains no evidence that any employing establishment supervisor or manager committed error or abuse in discharging management duties.²²

Regarding appellant's general contention that she was harassed by employing establishment management, mere perceptions of harassment or discrimination are not compensable under FECA.²³ Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. A claimant must establish a factual basis for his or her allegations with probative and reliable evidence.²⁴ As noted, appellant did not submit evidence to support specific actions by management to show a persistent disturbance, torment or persecution, *i.e.*, mistreatment by management.²⁵ She therefore did not establish a factual basis for her claim of harassment by probative and reliable evidence.²⁶

The Board finds that appellant did not meet her burden of proof to establish that she sustained a stress-related condition in the performance of duty causally related to factors of her federal employment.²⁷

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.

²¹ *Id.*

²² *See David C. Lindsey, Jr.*, 56 ECAB 263 (2005).

²³ *James E. Norris*, *supra* note 14.

²⁴ *Id.*

²⁵ *Beverly R. Jones*, *supra* note 15.

²⁶ *See Robert Breeden*, 57 ECAB 622 (2006).

²⁷ *Leslie Moore*, *supra* note 3.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated October 28 and July 8, 2011 are affirmed.

Issued: July 13, 2012
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