

FACTUAL HISTORY

On July 12, 2010 appellant, then a 44-year-old contract specialist, filed an occupational disease claim alleging that she developed depression due to factors of her federal employment. She alleged that she was subjected to an increased workload in a new branch and lack of support and disregard for her position by her coworkers and supervisors.

Appellant attributed her depression to confrontations with employees and management; a level of workload and requirements that prevented her from being successful in her position; and disregard by her supervisor and fellow employees for her contracting advice and requests.² She alleged that management improperly disciplined her following an unprofessional comment regarding contractor responsibilities at the JFK Federal Building by blowing the comment out of proportion and insisting on a meeting even after she had apologized for the comment. Appellant complained about office procedures, noting that protocol was not followed in many cases.³ She alleged that, by seeking contracting advice from the Small Business Administration rather than from her own agency personnel, her supervisor (Roman Piaskoski) showed a lack of respect for her and agency contracting personnel. Appellant felt singled out and harassed when management was unnecessarily copied on e-mails regarding expired contracts. Communication was poor between employees and the service centers and management did not clearly define her role for utility contracts.⁴ Appellant was frustrated that Mr. Piaskoski did not want to be a “hands-on” supervisor. She alleged that she felt forced to provide her user name and password to “access” on July 8, 2010 due to an urgent request.

Appellant alleged that on September 29, 2008 she was physically and verbally attacked by Coworker Judie Muise.⁵ After she informed Ms. Muise that information was missing from a spreadsheet, she allegedly stomped into appellant’s office and stated in a loud, belligerent voice that she could not fix the spreadsheet without an explanation as to what was missing. Appellant told her to “adjust her attitude.” Ms. Muise then allegedly pulled appellant’s left arm with force, pulling her bracelet off in the process and stated, “Let’s go see Gabe about this.” Following the claimed encounter, Ms. Muise reportedly threw the spreadsheet, which had been wadded into a ball, into appellant’s office. Appellant commented, “That’s mature,” whereupon Ms. Muise allegedly “got in her face” and with an angry look yelled, “F___ you!” She also asked, “Why don’t you take some more prozac?” Appellant stated that she was shocked at the verbal and physical aggression and was fearful of being hit.

² Appellant stated that her requests were ignored and advice contradicted by those who did not have contracting training or experience.

³ Appellant submitted copies of e-mails reflecting that reports often did not include spreadsheets with details for each utility account. She submitted copies of e-mail correspondence from May 24 to June 15, 2010 between herself and supervisors, which she contended showed their complete disregard for any contracting advice from well-experienced contracting personnel. Appellant alleged that management’s lack of response to her e-mails significantly delayed contracting actions for utilities whose contracts had already been expired for nine months.

⁴ Appellant submitted e-mail correspondence dated June 23 to July 2, 2010 reflecting alleged failure on the part of management to properly communicate and implement the contracting processes needed for utility contracts.

⁵ Appellant submitted a September 30, 2008 statement regarding the September 29, 2008 incident between herself and Ms. Muise.

Appellant submitted a July 3, 2010 report from Dr. Hilary S. Norton, Ph.D., a licensed clinical psychologist, who diagnosed major depression. She reported that she was overwhelmed by her workload, which increased continually and was unable to keep up with and be successful at her job due to the inordinate amount of work. Appellant complained that her supervisor was uninformed and dismissive and that her colleagues were unsupportive.

In a letter dated July 23, 2010, the employing establishment controverted appellant's claim, contending that her work situation was not any more stressful or demanding than the norm and that she was not treated in any way that would exacerbate her existing medical condition. The employer stated that she was considered to be a very good contracting specialist. Though appellant was absent due to illness during substantial periods of time, she never indicated that the absences were due to psychiatric issues until June 24, 2010.

The employing establishment stated:

“It is a fact that all [c]ontract [s]pecialist positions have a heavy workload and work under a certain amount of stress, as do virtually all other federal positions today. A review of [appellant's] employment history shows that she has worked for a number of different supervisors, in different organizations, with varying workloads. According to [appellant's] current supervisor, [Mr.] Piaskoski, there have been a number of situations in which [appellant] has stated that she could not meet certain deadlines due to the workload and that has always been accepted by management at face value. It is understood that all employees have substantial workload and she has never been disciplined or chastised for not meeting assignments on time.”

The employing establishment stated that, if appellant had worked overtime, she did so without management approval. Appellant had been provided with a flexible work schedule and was permitted to telework essentially whenever she requested it. Her frequent absences were never challenged.

The employing establishment contended that appellant's reaction to her treatment by coworkers' and supervisors' qualifications was self-generated, noting that she reacted very emotionally to work disagreements of any kind. It denied her allegations that she was not supported by management, noting that she received an above average performance rating and very substantial cash awards, in recognition of her work and appreciation by her supervisor. The employing establishment acknowledged that appellant did have several mutual work altercations with a coworker in her previous organization and was reassigned the year prior to her current organization and no longer worked in close proximity to the individual.

On September 8, 2010 Dr. Norton stated that appellant was struggling with anxiety and depression that appeared to have been caused and/or exacerbated by the stress level at work.

On October 7, 2010 OWCP informed appellant that the information submitted was insufficient to establish her claim and requested a detailed description of the conditions or incidents she believed caused or contributed to her illness. It advised her to submit a medical

report providing a diagnosis and an opinion with an explanation as to how incidents of her federal employment contributed to her condition.

Appellant submitted June 18, 2010 e-mail correspondence with Walter Perez of the employing establishment regarding her involvement in the utility contract process. She expressed her inability to handle the totality of the North region at once, due to the overwhelming nature of the project.

In a letter dated October 15, 2010, appellant stated that she was initially diagnosed with depression after a death in the family in 2004, more than a year after she began working at the employing establishment. She was transferred to the Energy and Environmental Division. In spite of assurances that appellant would be working only on utility contracts, which were very straightforward and easy to accomplish, her workload increased significantly. Appellant noted that she was required to work on an overwhelming number of utility contracts (259), as well as construction and cafeteria contracts. Her stress level increased as her coworkers, upon whom she depended for information and reports, did not have experience in contracts and her supervisor was not a contracts specialist. Appellant contended that she would have been more successful in the completion of her projects if her supervisor had been a contracts specialist, because he would have been able to properly evaluate workload, understand the condition of each procurement and help overcome obstacles.

Appellant agreed with the employing establishment's statement that everyone's workload was heavy. She argued, however, that her workload was not reasonable. Appellant explained that contracting was a very time-sensitive profession and depended on others to obtain information at the needed time. She reiterated the importance of having a supervisor with a specialty in contracts. Appellant acknowledged that she was never disciplined for missing deadlines; she attributed her stress, however, to contracting requirements (Federal Acquisition Regulations), the pressure received from missed deadlines, delayed contracts, expired contracts, threatened shutoffs of utilities and the workload conditions that allow no opportunity whatsoever to be successful in a highly structured contracting environment.⁶

By decision dated January 19, 2011, OWCP denied appellant's claim finding that she failed to establish a compensable employment factor. The claims examiner found that the September 29, 2008 incident with Ms. Muise occurred as alleged. Noting that appellant had been reassigned a year prior and was no longer in close proximity to Ms. Muise, he found that there was no evidence that the employing establishment had erred in its handling of the administrative matter or that the incident resulted in her disability. OWCP also found that there was no probative evidence supporting an unreasonable workload or that she was disciplined for failing to meet deadlines; there was no evidence of error or abuse regarding appellant's allegations that she was improperly disciplined; and her feelings of being treated unprofessionally and of being offended by the supervisor's consultation with noncontracting agencies were self-generated. The claims examiner found that appellant had failed to factually establish her remaining allegations, including those of harassment and discrimination.

⁶ Appellant provided a spreadsheet identifying 226 utilities contracts, in addition to 3 construction and 2 cafeteria contracts, for which she was reportedly responsible.

On January 21, 2011 appellant, through her representative, requested a telephone hearing and additional evidence repeating her allegations.

At a May 11, 2011 hearing, appellant testified that her supervisor was not a contracts specialist and therefore provided her little guidance. She had problems meeting numerous deadlines and that, although she worked 40 hours a week, she routinely fell behind in her work.

By decision dated September 27, 2011, an OWCP hearing representative affirmed the January 19, 2011 decision. He found that the September 29, 2008 incident involving Ms. Muise occurred as alleged but that there was no evidence that the employing establishment had erred in its handling of the administrative matter or that the incident resulted in appellant's disability. The claims examiner found that the evidence was insufficient to establish that she had a heavy workload or had trouble meeting deadlines. He also found that there was no evidence of error or abuse regarding administrative matters.

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 work duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA. 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.⁷

Generally, actions of the employing establishment in administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties, do not fall within coverage of FECA. Where the evidence demonstrates, however, that the employing establishment either erred or acted abusively in the administration of personnel matters, coverage may be afforded.⁸ Assignment of work is an administrative function of the employer,⁹ as is an investigation by the employing establishment.¹⁰

Where the claimant alleges compensable factors of employment, she must substantiate such allegations with probative and reliable evidence.¹¹ The fact that a claimant has established compensable factors of employment does not establish entitlement to compensation. The employee must also submit rationalized medical opinion evidence establishing that she has an

⁷ *Lillian Cutler*, 28 ECAB 125 (1976).

⁸ *Michael Thomas Plante*, 44 ECAB 510 (1993).

⁹ *James W. Griffin*, 45 ECAB 774 (1994).

¹⁰ *Jimmy B. Copeland*, 43 ECAB 339 (1991).

¹¹ *Joel Parker, Sr.*, 43 ECAB 220 (1991).

emotional condition that is causally related to the compensable employment factor.¹² The opinion of the physician must be based on a complete factual and medical background, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific compensable employment factors identified by appellant.¹³

ANALYSIS

Appellant alleged that she sustained an emotional condition as a result of various incidents and conditions at work. OWCP denied her claim on the grounds that she failed to establish a compensable employment factor. The Board must initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of FECA.

Appellant attributed her emotional condition to her workload, which increased and that she was unable to sustain due to the inordinate amount of work and time-sensitive nature of her job. She attributed her stress to the pressure of missed deadlines, delayed contracts, expired contracts, threatened shutoffs of utilities and the workload conditions that allowed no opportunity for success. The evidence reflects that appellant was required to work on 259 utility contracts, as well as construction and cafeteria contracts while working in the Energy and Environmental Division. She submitted e-mails wherein she complained about the amount of work required by her position and her inability to meet deadlines. The employing establishment acknowledged that all contracts specialists had a heavy workload and worked under a certain amount of stress. Appellant's supervisor stated that there were a number of situations in which appellant was unable to meet deadlines due to the workload, although she was never disciplined or chastised for not meeting assignments on time.¹⁴

The Board has held that emotional reactions to situations in which an employee is trying to meet her regularly assigned position requirements are compensable. In *Tina D. Francis*,¹⁵ the employee claimed stress related to her regular and specially assigned supervisory duties. The Board found that she had established compensable employment factors. Appellant has claimed that stress related to her regular duties as a contracts specialist caused her emotional condition. Given that these duties were part of her job requirements, as documented by evidence of record, the Board finds that she has established a compensable employment factor in this regard.¹⁶

¹² *James W. Griffin*, *supra* note 9.

¹³ *Donna Faye Cardwell*, 41 ECAB 730 (1990).

¹⁴ The Board notes that the fact that appellant was not disciplined for failing to meet her deadlines does not obviate the fact that she was unable to successfully perform her duties.

¹⁵ See *Tina D. Francis*, 56 ECAB 180 (2004). See also *Georgia F. Kennedy*, 35 ECAB 1151, 1155 (1984); *Joseph A. Antal*, 34 ECAB 608, 612 (1983).

¹⁶ The hearing representative found appellant's allegations of heavy workload were not compensable work factors due to the amount of leave she had taken. The Board finds the leave records do not discount that she did, in fact, present evidence of heavy workload as confirmed by her employer.

Appellant alleged that on September 29, 2008 Ms. Muise came to her office and stated in a loud, belligerent voice that she could not fix a spreadsheet without an explanation as to what was missing, pulled appellant's left arm with force, pulling her bracelet off in the process and said, "Let's go see Gabe about this." Ms. Muise then reportedly threw the spreadsheet into a ball, into appellant's office and yelled at her. She also asked, "Why don't you take some more prozac?" Appellant stated that she was upset at the verbal and physical aggression and became fearful of being hit. The Board has recognized the compensability of verbal abuse in certain circumstances. This does not imply, however, that every statement uttered in the workplace will give rise to coverage under FECA.¹⁷ Appellant provided no evidence to corroborate the alleged statements or actions. The Board finds that her emotional reaction to the coworker's behavior must be considered self-generated in that it resulted from her perceptions regarding her coworker's actions.¹⁸

Appellant alleged that management improperly disciplined her following an unprofessional comment regarding contractor responsibilities insisting on a meeting even after she had apologized for the comment. She complained about certain office procedures, noting that protocol was not often followed. Appellant stated that her colleagues were generally unsupportive and her supervisor was uninformed and dismissive. She contended that, by seeking contracting advice from the SBA, rather than from her own agency personnel, her supervisor showed a lack of respect for her and other agency contracting personnel. Appellant contended that communication was poor between employees and the service centers and that management did not clearly define her role for utility contracts. She alleged that she felt forced to provide her user name and password to "access" on July 8, 2010 due to an urgent request. Appellant felt singled out and harassed when management personnel were unnecessarily copied on e-mails regarding expired contracts. The Board finds that these allegations relate to administrative or personnel matters unrelated to her regular or specially assigned work duties. As noted, disability is not covered from reactions to actions taken in an administrative capacity unless it is shown that the employing establishment erred or acted abusively in its administrative capacity.¹⁹ On the other hand, 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.²⁰ In determining whether the employing establishment erred

¹⁷ See *Mary A. Sisneros*, 46 ECAB 155, 163-64 (1994); *David W. Shirey*, 42 ECAB 783 (1991).

¹⁸ See *David S. Lee*, 56 ECAB 602 (2005).

¹⁹ See *L.S.*, 58 ECAB 249 (2006) (Frustration from not being allowed to work in a particular position or to hold a particular job, such as one that would allow an employee to take off a particular day, is not something that workers' compensation covers. Any emotional condition arising therefrom, is simply considered self-generated); *Robert Breeden*, 57 ECAB 622 (2006) (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); *Ronald K. Jablanski*, 56 ECAB 616 (2005) (An employee's frustration from not being permitted to work in a particular environment or to hold a particular position is not compensable. Likewise, an employee's dissatisfaction with perceived poor management is not compensable).

²⁰ See *C.T.*, Docket No. 08-2160 (issued May 7, 2009); *J.C.*, 58 ECAB 594 (2007); *Jeral R. Gray*, 57 ECAB 611 (2006).

or acted abusively, the Board has examined whether the employing establishment acted reasonably.²¹

The Board finds that appellant has submitted insufficient evidence to establish that the employing establishment acted unreasonably regarding the above-mentioned administrative matters. Although appellant may have disagreed with her supervisor's mode of discipline, requiring a meeting following an inappropriate remark does not seem unreasonable under the circumstances. The Board recognizes that she disapproved of office procedures, perceived failure to properly communicate with staff and to clearly define her role as a contracts specialist and that she found it offensive when management was copied on e-mails regarding expired contracts. Appellant's dissatisfaction with perceived poor management, however, is not compensable.²² She also alleged that she felt forced to provide her user name and password to "access" on July 8, 2010 due to an urgent request. Appellant did not, however, provide evidence establishing that the employing establishment required her to inappropriately provide secure information. Therefore, her reactions must be considered self-generated. Appellant also failed to establish any error or abuse in management's handling of the September 29, 2008 incident with Ms. Muise. Its action of reassigning her to avoid contact with Ms. Muise was reasonable under the circumstances.

In the present case, appellant has established a compensable employment factor with respect to the above-described regular employment duties. Therefore, OWCP must base its decision on an analysis of the medical evidence. The case will be remanded for this purpose.²³ After such further development as deemed necessary, OWCP should issue an appropriate decision on this claim.

On appeal, counsel argues that appellant established compensable factors of employment. For reasons stated, the Board agrees.

CONCLUSION

The Board finds that the case is not in posture for decision regarding whether appellant sustained an emotional condition in the performance of duty. The case is remanded to OWCP to analyze and develop the medical evidence as it deems necessary and to determine whether she sustained an emotional condition due to the accepted employment factors.

²¹ See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

²² *V.W.*, 58 ECAB 428 (2007); *Linda J. Edwards-Delgado*, 55 ECAB 401 (2004) (mere disagreement with or dislike of actions taken by a supervisor or manager will not be compensable absent evidence establishing error or abuse).

²³ See *Lorraine E. Schroeder*, 44 ECAB 323, 330 (1992).

ORDER

IT IS HEREBY ORDERED THAT the September 27, 2011 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for proceedings consistent with this decision of the Board.

Issued: June 14, 2012
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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