

FACTUAL HISTORY

On June 9, 2008 appellant, then a 57-year-old electrician, filed a traumatic injury claim alleging that on May 16, 2008 she developed an anxiety disorder due to a hostile work environment. She stopped work on May 20, 2008 and has not returned.

In correspondence dated June 20, 2008, OWCP informed appellant that the evidence of record was insufficient to support her claim. It advised her as to the type of medical and factual evidence that should be submitted to establish her claim and was given 30 days to provide the requested information.

In response to OWCP's request for information, appellant submitted medical and factual evidence including medical evidence from Dr. Bruce Carlton, a treating Board-certified internist. In progress notes for the period May 20 to June 3, 2008, Dr. Carlton provided physical findings and diagnosed depression and generalized anxiety disorder. A May 23, 2008 report from him contained diagnoses of acute anxiety disorder in the setting of prior mild depression. Dr. Carlton related that appellant has been his patient for 23 years and he attributed the diagnosis of acute anxiety disorder in the setting of prior mild depression to an incident on May 16, 2008 in which appellant related being subjected to hostile and aggressive behavior.

The record contains appellant's statement and a June 9, 2008 statement from Erma Lidyard, a coworker, who reported seeing appellant sobbing and extremely upset the last time she saw her. Appellant, in her undated statement, related being called into her supervisor's office on May 16, 2008 and told to immediately get her work restrictions updated. At that time she went to the dispensary to get her updated work restrictions, returned with the requested paperwork and handed it to Robert Heffley, a resource manager. Appellant stated that she was unaware that her position was in jeopardy at that time. She left Mr. Heffley's office at about 10:10 a.m., was told to return at around 10:40 a.m. and it was when she returned to Mr. Heffley's office that she was told he had no job for her within her restrictions. Mr. Heffley informed appellant that he had made four calls trying to find her a job within her restrictions, but was unsuccessful. As he was unable to find her a job within her restrictions Mr. Heffley informed appellant that she was being referred to the Injured Worker Program (IWP). Appellant alleged that the lack of prior notice to enable her to get her belongings together was very stressful and upsetting. She stated that she decided at this point to put in a leave slip for 244 hours of leave without pay (LWOP), which she hoped would keep her out of the IWP until a new fiscal quarter started and the odds of getting a real job would be better. Appellant related that Mr. Heffley informed her that he could not authorize her request for 244 hours of LWOP and that it would have to be signed and authorized by Dwight Otis. She alleged that Mr. Otis ranted and raved and refused to sign off on her request, thereby causing her to cry hysterically. Appellant added that during her 29 years and 7 months at the employing establishment, she had never been mistreated in this manner.

On July 21, 2008 OWCP received an undated response from Mr. Heffley denying appellant's allegations regarding her job being in jeopardy. Mr. Heffley stated that no promises had been made to appellant about her current assignment. He stated that appellant was asked to get an update on her limitations as the one currently in her record pertained to a specific worksite and was no longer applicable. Appellant was instructed to obtain an update at her convenience

on the 15th but when no update was received on the 16th she was directed to go to the clinic to obtain an update on her limitations.

By decision dated July 29, 2008, OWCP denied appellant's claim on the grounds that she failed to establish any compensable work factors.

Subsequently OWCP received disability slips releasing appellant to work for half a day from August 7 to 15, 2008 and to full duty on August 18, 2008. In the July 3, 2008 certification of health care provider form, Dr. Carlton diagnosed generalized anxiety disorder which began on May 18, 2008 and ended on July 24, 2008.

On October 7, 2008 the employing establishment informed appellant of a proposal to put her in enforced leave status due to her inability to perform her job. Appellant was advised of how long the enforced leave would continue.

On October 17, 2008 appellant requested reconsideration on the denial of her claim. Accompanying her request was her statement detailing the events she believed caused or contributed to her condition. Appellant alleged that Mr. Heffley and Mr. Otis erred in the handling of her leave request. She noted that she requested 120 hours of LWOP for the period June 11 to July 1, 2008 and 16 hours of annual leave for July 2 to 3, 2008 and neither Mr. Heffley nor Mr. Otis informed her there was a problem approving her leave at the time she submitted it. Appellant alleged that on June 26, 2008 she found out that she had been charged with 40 hours of being absent without leave (AWOL), which caused her great distress as being charged with AWOL is a disciplinary action. She related calling Mr. Heffley to discuss this and he informed her that he had been instructed to charge her with AWOL. Allegedly Mr. Heffley informed appellant that her request for LWOP had been denied and he had been instructed to charge her with AWOL instead. According to appellant at no time was she informed that her leave request had not been approved by the employing establishment. She attributed this action on the part of management as retaliation for the filing of a stress claim and that being intentionally and erroneously charged with AWOL added to her stress. Next appellant alleged that on July 8, 2008 she received an order to return to work on July 10, 2008 and that the same letter informed her that justification was required for her emergency absence. She related that the employing establishment's letter regarding her leave request under the Family and Medical Leave Act (FMLA) was misleading and designed to intimidate, harass and cause her stress. Appellant also attributed her stress to the employing establishment's error in interpreting her updated limitation sheet, the abruptness of her transfer and her inability to complete several unfinished jobs.

With her reconsideration request, appellant submitted copies of leave requests, which contained no signature by the employing establishment either approving or denying the requested leave, and a copy of her earnings and leave statement for the pay period ending June 21, 2008. A June 9, 2008 leave slip requested 120 hours of LWOP under the FMLA for the period June 11 to July 1, 2008 and 16 hours of annual leave for July 2 and 3, 2008. The leave requests were dated July 24 and August 14, and requested 40 hours of LWOP for the period July 24 to August 6, 2008 and 28 hours of LWOP for the period August 7 to 15, 2008 under the FMLA as she was working four hours per day according to her physician's instructions. The earnings and leave statement reflected 40 hours of AWOL.

In an e-mail correspondence dated December 16, 2008 Louis Fattrusso, IWP manager, responded to appellant's allegations. He noted that a requirement of appellant's job was to update her limitations and that change in the worksite is normal for work performed in a shipyard. Mr. Fattrusso also stated that leaving a worksite unmanned is normal for work at a shipyard and is a management decision resulting from shifts in priorities. According to him it was standard practice to find light-duty jobs for workers with restrictions. Mr. Fattrusso denied that anyone yelled at appellant and that the approval or disapproval of leave is a management right. He also denied that appellant was harassed, verbally abused or threatened at any time.

In a January 23, 2009 letter, appellant alleged that the initial request for an update on her limitations was casual, but that the following day the request appeared to have become urgent and made her feel like a negligent employee. She also noted her disagreement with comments made by Mr. Fattrusso regarding her workload, shifts in job priorities, the change in her job, her work limitations and management's decision to leave work unmanned. Appellant also alleged that the employing establishment erred in its interpretations of her work restrictions.

By decision dated February 5, 2009, OWCP denied modification.

On December 3, 2009 appellant requested reconsideration and submitted factual evidence in support of her claim. Accompanying her request were copies of her informal Equal Employment Opportunity (EEO) claim alleging discrimination and harassment and a May 13, 2009 EEO settlement agreement. The May 13, 2009 EEO settlement agreement contained no admission of error on the part of the employing establishment. The employing establishment agreed to allow appellant 90 days to seek a vacant funded position prior to the issuance of a letter proposing removal; appellant was to be provided assistance with her résumé and use of an application form; appellant's leave record for AWOL for the period June 9 to 11, 2008 would be changed to LWOP; and Dan Cox would determine if there was a job appellant could be assigned for 120 days and whether there was an available funded job within appellant's qualifications and restrictions.

The record also contains copies of leave slips and an earnings and leave statement for the period ending June 21, 2008 with a pay date of June 27, 2008. Appellant submitted a May 16, 2008 leave slip requesting 244 hours of LWOP for the period May 19 to June 30, 2008. She submitted a June 9, 2008 leave slip requesting 120 hours of LWOP for the period June 11 to July 1, 2008 per her doctor's instructions. Appellant submitted a July 24, 2008 leave slip requesting 40 hours of LWOP for the period July 24 to August 6, 2008. Under remarks, she noted the leave was requested under the FMLA and she was working four hours per day. None of the leave slips contained a signature by a supervisor approving or disapproving the requested leave.

By decision dated March 11, 2010, OWCP denied modification.

On February 28, 2011 appellant requested reconsideration. She submitted a copy of a May 16, 2008 leave slip requesting 244 hours of LWOP for the period May 19 to June 30, 2008. The leave slip contains no signature by a supervisor approving or disapproving the requested leave.

In a March 21, 2011 e-mail correspondence, Mr. Fattrusso responded to appellant's allegations. He noted that the placing of appellant on AWOL when she failed to return to work after her approved period of leave was a routine administrative action pending medical justification for her work absence. Mr. Fattrusso denied that the employing establishment considered her updated restrictions to be new restrictions. Lastly he stated that the work appellant had been doing in her light-duty assignment was no longer available which was the reason for her being assigned to the IWP. A referral to the IWP was so a determination could be made as to whether any work was available within her restrictions.

Mr. Fattrusso submitted a copy of a May 16, 2008 leave slip from appellant requesting 120 hours of LWOP for the period May 19 to June 10, 2008, which Mr. Otis approved that day.

By decision dated April 7, 2011, OWCP denied modification.

LEGAL PRECEDENT

To establish a claim that he sustained an emotional condition in the performance of duty, an employee must submit the following: (1) medical evidence establishing that he has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.²

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment.³ 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.⁴ 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.⁵ 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.⁶

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

² V.W., 58 ECAB 428 (2007); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

³ L.D., 58 ECAB 344 (2007); *Robert Breeden*, 57 ECAB 622 (2006).

⁴ A.K., 58 ECAB 119 (2006); *David Apgar*, 57 ECAB 137 (2005).

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

⁶ J.F., 59 ECAB 331 (2008); *Gregorio E. Conde*, 52 ECAB 410 (2001).

factors of employment and may not be considered.⁷ If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor.⁸ 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.⁹

ANALYSIS

Appellant alleged that she sustained an emotional condition due to a number of employment incidents and conditions. The Board must initially review whether the alleged incidents of employment are compensable factors under the terms of FECA.

The Board notes that appellant's allegations relate to administrative or personnel matters. These allegations are unrelated to the employee's regular or specially assigned work duties and do not generally fall within the coverage of FECA.¹⁰ However, the Board has also found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse. In determining whether the employing establishment erred or acted abusively, the Board has examined whether management acted reasonably.¹¹

Specifically, appellant attributed her stress to her referral to the IWP; being required to update her work restrictions; and being told she was being reassigned as her job was no longer funded. As noted above, disability is not covered where it results from such factors as frustration from not being permitted to work in a particular environment or to hold a particular position. On the other hand, the Board has held that a change in an employee's work shift may under certain circumstances be a factor of employment to be considered in determining if an injury has been sustained in the performance of duty.¹² To show that an administrative action such as the proposed change in her work hours and job implicated a compensable employment factor appellant would have to show that the employing establishment committed error or abuse.¹³ In support of her contention, appellant submitted a copy of an EEO settlement agreement in which the employing establishment agreed to help her with her résumé, find a funded job and help her with applying for jobs. This agreement does not show that the employing establishment erred or acted abusively when it requested an updated list of her restrictions; informed her that her current

⁷ *D.L.*, 58 ECAB 217 (2006); *Jeral R. Gray*, 57 ECAB 611 (2006).

⁸ *K.W.*, 59 ECAB 271 (2007); *David C. Lindsey, Jr.*, 56 ECAB 263 (2005).

⁹ *Robert Breeden*, *supra* note 3.

¹⁰ An employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under FECA as such matters pertain to procedures and requirements of the employer and do not bear a direct relation to the work required of the employee. *V.W.*, *supra* note 2; *Sandra Davis*, 50 ECAB 450 (1999).

¹¹ *See K.W.*, *supra* note 8; *Richard J. Dube*, 42 ECAB 916, 920 (1991).

¹² *See Gloria Swanson*, 43 ECAB 161, 165-68 (1991); *Charles J. Jenkins*, 40 ECAB 362, 366 (1988).

¹³ *See Richard J. Dube*, *supra* note 11.

job was no longer available due to lack of funding and referred her to the IWP. Appellant also submitted a witness statement from Ms. Lidyard, a coworker, reporting seeing appellant sobbing and extremely upset. This statement is insufficient to establish any error or abuse as it contains no details or specifics regarding the administrative action appellant alleged the employing establishment erroneously took towards her. The record contains no other evidence establishing error or abuse on the part of the employing establishment with respect to these actions. As appellant has not presented sufficient evidence that the employing establishment acted abusively or committed error with regard to requiring an updated list of her work restrictions; reassigning her from her position as it was no longer funded and referring her to the IWP, appellant has not established a compensable factor of employment in this regard.

Appellant also alleged that she was improperly charged with AWOL when she had provided leave slips to her supervisor. She also alleged that Mr. Otis acted inappropriately in not acting on her request for 244 hours of LWOP for the period May 19 to June 30, 2008 and 120 hours of LWOP for the period June 10 to July 1, 2008. Initially, the Board notes that the record contains two leave slips signed by appellant dated May 16, 2008. One requested 244 hours of LWOP and contains no signature granting or denying the leave. The other leave-slip requests 120 hours of LWOP and was approved by Mr. Otis on May 16, 2008. The Board notes that, although the handling of leave requests, are generally related to the employment, they are administrative functions of the employer and not duties of the employee.¹⁴ The record contains no evidence regarding appellant's allegation that the employing establishment inappropriately handled her request for 244 hours of LWOP for the period May 19 to June 30, 2008 and 120 hours of LWOP for the period June 10 to July 1, 2008 or that she was improperly charged with AWOL for the period. While the record contains a settlement agreement that stated that the employing establishment will change the leave charged from AWOL to LWOP, appellant has provided no evidence to show that the employing establishment improperly charged her with AWOL. However, nowhere in the agreement does the employing establishment acknowledge that it erroneously charged her with AWOL. Moreover, the record contains no evidence that the employing establishment acted abusively or erroneously in only granting appellant's request for 120 hours of LWOP for the period May 19 to June 10, 2008, charging her with AWOL when she did not return to work and not granting or denying her request for 244 hours for the period May 19 to June 30, 2008 and 120 hours of LWOP for the period June 11 to July 1, 2008. Appellant has presented no corroborating evidence to support that the employing establishment acted unreasonably in these matters. Thus, she has not established administrative error or abuse in the performance of these actions and therefore they are not compensable under FECA.

For the foregoing reasons, OWCP correctly found in its April 7, 2011 decision, that appellant did not establish any compensable employment factors under FECA and, therefore, has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty. As appellant failed to establish a compensable factor of employment, it is not necessary to address the medical evidence in this case.¹⁵

¹⁴ *C.S.*, 58 ECAB 137 (2006); *Lori A. Facey*, 55 ECAB 217 (2004).

¹⁵ *See J.C.*, 58 ECAB 594 (2007); *Margaret S. Krzycki*, 43 ECAB 496 (1992).

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 he sustained an emotional condition in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 7, 2011 is affirmed.

Issued: March 16, 2012
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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