

worked in a hostile work environment due to harassment and stress from management and coworkers.

On March 12, 2010 Lisa Dighams, a nurse practitioner, diagnosed depression and anxiety. Appellant related ongoing work stress which peaked with news that her full-time job would be reduced to working 12 hours per week.

In March 15, 2010 correspondence, Dr. F. Tom Peterson, a clinical psychologist, opined that appellant was totally disabled due to a severe stress reaction to work environment dynamics.

On March 29, 2010 Dr. Peterson diagnosed acute stress disorder, anxiety/panic and depression. He noted that appellant attributed her acute stress condition due to work changes and the belief that these changes were made to force her to quit her job. Dr. Peterson, based upon test findings, history provided by appellant and examination of appellant, attributed her current condition and disability to undue work stress.

In a March 30, 2010 statement, appellant alleged that Brandi Lien, postmaster, offered her a modified job on March 12, 2010 which reduced her work hours from 38 hours to 12 hours per week. She related feeling that the change in her work hours disregarded a Merit Systems Protection Board (MSPB) agreement and its protection. Appellant also related having feelings of discrimination and harassment as a result of this reduction in her work. She noted that she was an injured worker, and that there have been losses in the staff so there is work to do and clerks with lower seniority are getting work hours when she is not. Appellant also alleged being treated differently from other employees in her office. She alleged that Ms. Lien was harassing her by instructing her to hand deliver leave slips instead of leaving them on Ms. Lien's desk as other employees do. Lastly, appellant alleged being subjected to harassment and discrimination by the employing establishment beginning in 2004.

On March 31, 2010 Ms. Lien denied appellant's allegations that appellant was subjected to a hostile work environment and noted that, from what she has observed, all the employees seemed to get along. She stated that she has an open door policy and that since returning in 2004 appellant has never related feelings of harassment. Ms. Lien stated that appellant is treated no differently from other employees. With respect to leave slips, she related asking the clerks to hand her their time slips. Lastly, Ms. Lien stated that appellant's work hours were changed as a result of the National Reassessment Process (NRP) by the employing establishment.

By correspondence dated April 12, 2010, OWCP informed appellant that the evidence of record was insufficient to support her claim. Appellant was advised as to the medical and factual evidence required and given 30 days to submit the requested information.

On July 1, 2010 OWCP received an April 26, 2010 letter from appellant responding to OWCP's request for further information. Appellant alleged that following a meeting on March 12, 2010 concerning the employing establishment's NRP, she had feelings of intimidation and harassment as she believed she had no protection from her 2004 settlement agreement. She alleged that she had lived up to her part of a 2004 settlement agreement between herself and management. Appellant alleged that at the meeting Ms. Lien reduced appellant's work hours to 12 hours per week. She stated that following the meeting she felt sick and gave a sick leave

request to Ms. Lien. Appellant alleged that she sent by facsimile a doctor's note to Ms. Lien for her days off work on March 12 and 13, 2010 and that Ms. Lien initially placed her on absent without leave (AWOL) because she had not received the slip. She also alleged that she was required to return her keys. Next, appellant noted that she requested leave to attend a funeral but Ms. Lien informed appellant it had become lost on her desk. Ms. Lien instructed appellant that she was to hand leave slips to her instead of leaving them on her desk. Appellant also alleged that Ms. Lien harassed her in other ways which were part of an Equal Employment Opportunity complaint she had filed.

By decision dated July 2, 2010, OWCP denied appellant's claim on the grounds that she failed to establish any compensable work factors.

Subsequent to the decision, appellant submitted additional information. She stated her employment conditions had changed as her hours were reduced from 38 hours to 12 hours per week. Appellant alleged that the employing establishment ignored a prior MSPB's settlement agreement. She also alleged that she was an injured worker and had feelings of harassment, hopelessness and discrimination as a result of the reduction in hours.

On July 30, 2010 OWCP received a copy of a March 19, 2004 MSPB settlement agreement between appellant and the employing establishment. The settlement agreement stated the contents of the agreement were not to be used for precedent and may not be "cited in any other proceeding in any forum." The agreement dealt with the reassignment of appellant as a mail processing clerk working 38 hours over six days per week and that appellant agreed not to apply for any postmaster vacancies or positions with financial responsibility for a period of five years.

Appellant submitted statements from Sandra Jerde, a coworker, who stated that she did not recall Ms. Lien instructing them to personally hand their leave slips to her. Ms. Jerde also referenced an incident involving Jackie Glisson, appellant and herself when Ms. Glisson related that she had been forced to do something by Ms. Lien that Ms. Jerde believed was wrong.

On July 27, 2010 appellant requested an oral hearing before an OWCP hearing representative, which was held on December 15, 2010. In support of her request, she submitted a copy of the March 19, 2004 MSPB settlement agreement and a May 20, 2010 disability note from Dr. Peterson, who diagnosed occupationally-induced depression, stress and anxiety disorders which he attributed to a hostile work environment and a breach of a prior work agreement.

On October 18, 2010 Dr. Peterson diagnosed trauma-induced stress disorder defined by accentuated depression and anxiety. He related that her "symptoms become noticeably accentuated" when discussing her work at the employing establishment. Dr. Peterson opined that appellant was disabled from returning to work for the employing establishment as working "within the environment would predictably trigger considerable difficulty with concentration, focus, short-term memory and ability to relate to the public."

On December 30, 2010 Dr. Peterson diagnosed acute stress and anxiety disorder which he attributed to workplace stressors. He opined that a March 12, 2010 meeting with management

reactivated a fear from a series of work events in 2003 which had altered her view of the workplace as a safe environment.

Subsequent to the hearing, appellant submitted factual evidence in support of her claim including statements from Sherry Stambaugh, Ms. Jerde, Chris Udem and Melanie Aisenbrey.

On December 27, 2010 Ms. Udem responded to questions posed in which she wrote “yes” to questions of whether she felt discriminated against and did she feel Ms. Lien’s management style to be hostile. She related not being allowed work more than her set hours even if the office was short handed. Lastly, Ms. Udem noted feeling discriminated against because she was on limited-duty work.

The record also contains a December 27, 2010 response by Ms. Aisenbrey to questions posed. Ms. Aisenbrey related feeling that Ms. Lien created a hostile work environment, that there was no open door policy and that she did not feel any hostility from appellant. Lastly, she wrote “yes” to the question of whether she was fearful of retaliation and noted she was fearful at times of losing her job.

In a January 3, 2011 statement, Ms. Jerde stated that she felt Ms. Lien created a hostile work environment and she was somewhat fearful of losing her job. She also stated that Ms. Lien discriminated against her due to her experience and age by a schedule change.

In a January 4, 2011 statement, Ms. Stambaugh stated that Ms. Lien had been her subordinate supervisor and that Ms. Lien was aware of appellant’s situation. Ms. Stambaugh related that she observed that while working for her Ms. Lien quickly judged, acted on impulse when angry and tended to overreact. Next, she stated that Ms. Lien became angry and agitated when opposed and that she had to act as a referee on more than one occasion in situations with Ms. Lien and clerks or carriers. Ms. Stambaugh stated that Ms. Lien held grudges, was not fair with employees and had favorites, which she believed “promoted the atmosphere of hostility to others.” She related that it was her opinion that Ms. Lien continued managing this way and she believed because of the fear Ms. Lien inspired that she doubted any employees would stand up and tell the entire truth. Lastly, Ms. Stambaugh noted that when working with Ms. Lien that Ms. Lien made a statement that she wanted more younger workers and that she did not like older workers.

By decision dated February 7, 2011, OWCP’s hearing representative affirmed the denial of appellant’s claim.

LEGAL PRECEDENT

To establish a claim that she 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 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 as a result of several employment incidents and conditions. OWCP denied appellant's emotional condition claim on the grounds that she did not establish any compensable employment factors. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of FECA.

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).

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.

Appellant has not alleged any *Cutler* factor in her claim.¹⁰

Appellant alleged that harassment on the part of Ms. Lien contributed to her claimed stress-related condition. Specifically, she alleged that Ms. Lien harassed her and did not have an open door policy. To the extent that disputes and incidents alleged as constituting harassment by supervisors are established as occurring and arising from a claimant's performance of her regular duties, these could constitute employment factors.¹¹ However, for harassment or discrimination to give rise to a compensable disability under FECA, there must be evidence that harassment did in fact occur. Mere perceptions of harassment are not compensable under FECA.¹²

One instance that appellant alleges constitutes evidence of harassment by Ms. Lien is Ms. Lien instructing her to hand her any leave slips instead of leaving them on the desk. According to appellant no other employee was required to do this and is evidence of harassment by Ms. Lien. Other instances of alleged harassment and creating a hostile work environment include Ms. Lien forcing coworkers to sign statements they disagreed with and having favorites. Appellant has not submitted any corroborative evidence supporting her allegations of harassment, discrimination and a hostile work environment. The only evidence submitted by appellant consisted of witness statements from Ms. Stambaugh, Ms. Jerde, Ms. Udem and Ms. Aisenbrey. While they all stated they agreed that Ms. Lien created a hostile work environment and had favorites, they provided no specific instances with dates of harassment, hostile work environment or discrimination by Ms. Lien towards appellant. Moreover, the specific instances described by Ms. Stambaugh and Ms. Udem related to events occurring to them and not appellant. Ms. Lien denied subjecting anyone to harassment or creating a hostile work environment. Appellant has not submitted sufficient evidence to establish specific incidents of harassment, discrimination or exposure to a hostile work environment by Ms. Lien.¹³ She alleged that supervisors engaged in actions which she believed constituted harassment, but she provided insufficient corroborating evidence, such as witness statements, to establish that any specific actions actually occurred.¹⁴ The Board finds that appellant did not establish a compensable factor of employment in this regard.

Appellant's allegations regarding the handling of her leave requests, submitting supporting medical documentation for her leave request for March 12 and 13, 2010, asking her to return her keys and being erroneously placed on her on AWOL relate to noncompensable administrative and personnel matters.¹⁵ The Board finds that the evidence of record does not

¹⁰ *Supra* note 5.

¹¹ *K.W.*, *supra* note 8; *Doretha M. Belnavis*, 57 ECAB 311 (2006); *David W. Shirey*, 42 ECAB 783 (1991); *Kathleen D. Walker*, 42 ECAB 603 (1991).

¹² *J.F.*, 59 ECAB 331 (2008); *Robert G. Burns*, 57 ECAB 657 (2006); *Jack Hopkins, Jr.*, 42 ECAB 818 (1991).

¹³ *See Robert Breeden*, *supra* note 3; *Joel Parker, Sr.*, 43 ECAB 220 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

¹⁴ *See William P. George*, 43 ECAB 1159 (1992).

¹⁵ *Robert Breeden*, *supra* note 3 (allegations of unfair disciplinary actions relate to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of FECA).

establish that the administrative and personnel actions taken by Ms. Lien were in error and are therefore not considered factors of employment. An employee's emotional reaction to an administrative or personnel matter is not covered under FECA, unless there is evidence that the employing establishment acted unreasonably.¹⁶ Appellant has not presented sufficient evidence that the Ms. Lien acted unreasonably or committed error with regard to her handling of appellant's leave requesting medical documentation. Thus, appellant has not established a compensable factor of employment in this regard.

Lastly appellant alleged the employing establishment acted abusively on March 12, 2010 when it reduced her work hours and provided a new modified job offer. 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,¹⁷ where the evidence reflects that the employing establishment committed error or abuse.¹⁸ In support of her contention appellant submitted a copy of an MSPB settlement agreement concerning her work schedule. While appellant is correct that the agreement addresses her work hours, the agreement also specifically stated that it was not to be used for precedent or "cited in any other proceeding in any forum" and thus cannot be used to establish abuse. As she has not presented sufficient evidence that the employing establishment acted abusively or committed error with regard to her work hours and new job offer, appellant has not established a compensable factor of employment in this regard.

For the foregoing reasons, the Board finds 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.¹⁹

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.

¹⁶ *G.S.*, Docket No. 09-764 (issued December 18, 2009); *Jeral R. Gray*, *supra* note 7.

¹⁷ *See Gloria Swanson*, 43 ECAB 161, 165-68 (1991); *Charles J. Jenkins*, 40 ECAB 362, 366 (1988).

¹⁸ *See Richard J. Dube*, 42 ECAB 916 (1991).

¹⁹ *See J.C.*, 58 ECAB 594 (2007); *Margaret S. Krzycki*, 43 ECAB 496 (1992).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 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