

In her narrative statement, appellant stated that she spoke with Garland Jones, a coworker, on January 18, 2011 at 5:00 am regarding the mail. She stated:

“About 10 to 15 minutes later he came towards me in a very angry manner. He came close to me and began yelling at me that I wasn’t his boss. I didn’t know what he was talking about. I tried to say something, but he kept yelling at me very closely and gesturing, saying that I was not in charge, that I should be in the back dock.”

Appellant felt frightened and physically threatened because her coworker appeared to be out of control and to hate her for reasons that she could not understand.

Appellant reported the events immediately to her supervisors, Roselle Mangrobang and Maria Culloty and described her concerns for her safety. She left work after speaking with the supervisors. Appellant felt anxious and afraid of the employing establishment and Mr. Jones. She returned to work on January 19, 2011 only after calling to try to ascertain whether he was present. Appellant spoke to Ms. Mangrobang. Ms. Culloty approached appellant about her absence on January 18, 2011. Appellant again related the events and “felt a tightening in my chest, had difficulty breathing and began to shake.” She asked Ms. Mangrobang to take her to the hospital, but was instructed to wait. Appellant instead left and drove home with no improvement. She reported to the emergency room.

Ms. Culloty completed a statement on January 20, 2011 and noted that appellant did not work on January 19, 2011. She requested documentation for appellant’s absence. Appellant stated that she called the Postal Police for Mr. Jones and that Ms. Culloty could determine the appropriate leave category. She asked for a shop steward and shortly thereafter requested leave without pay for an indefinite period. Appellant attributed her leave to stress and Ms. Culloty disapproved the leave pending medical documentation.

Ms. Mangrobang completed a statement on February 3, 2011 and described the events of January 18, 2011. According to her appellant came to the front desk about 5:30 a.m. and stated, “I don’t know about Garland (Jones).” Appellant repeatedly described Mr. Jones as loud. Ms. Mangrobang informed appellant that when Mr. Jones returned from his break, she would assign him to a different work location away from appellant. Appellant replied, “I just don’t want him scratching my car like he did Toke’s (Yang).” Ms. Mangrobang stated that this referenced a previous incident at the employing establishment when a coworker’s vehicle was vandalized. Appellant requested that the security camera focus on her car to protect it. Ms. Mangrobang explained that this was not possible and appellant went home around 5:55 a.m. after speaking to Ms. Culloty. She did not work on January 19, 2011 and on January 20, 2011 asked if Mr. Jones was working. Ms. Mangrobang stated that he was not and appellant began work. Later, appellant requested a union steward as Ms. Culloty asked about her absence. Ms. Mangrobang informed appellant that three other employees were waiting to speak with the steward and that she would be scheduled for later. Appellant soon returned and asked to speak to a steward “right now.” Ms. Culloty reported that appellant asked to go home.

Dr. Kent Walter Andrews, a psychologist, completed a note dated February 1, 2011 indicating that appellant was restricted from contact with Mr. Jones.

In letters dated February 16, 2011, OWCP requested additional factual and medical evidence from the employing establishment and appellant in support of her claim. It allowed 30 days for a response. OWCP requested that the employing establishment provide comments from Mr. Jones addressing appellant's statement. OWCP telephoned the employing establishment on March 21, 2011 regarding the requested statement. The employing establishment responded *via* telephone on March 21, 2011 and stated that Mr. Jones had not returned to work.

Dr. Andrews submitted a note dated February 1, 2011 relating that appellant was threatened by a coworker. He stated that on January 18, 2011 Mr. Jones, a large man, without warning began yelling and screaming angrily and threateningly at appellant. Dr. Andrews reported appellant's statements that Mr. Jones yelled that she was not his boss and could not tell him what to do. Appellant was shocked, frightened and intimidated by Mr. Jones' outburst. She feared that he would attack her physically and believed that he was possibly under the influence of drugs. Appellant reported the incident to her supervisor and requested that the security camera monitor her car as another employee's car had been vandalized allegedly by Mr. Jones. This request was denied, but the supervisor asked if appellant wanted to go home. Appellant left work and called the Postal Police. She believed that her supervisors failed to comprehend the seriousness of the situation. Appellant returned to work on January 20, 2011 and a supervisor requested documentation to support her absence. She felt attacked, developed chest pain, difficulty breathing and started to shake. Appellant left work and reported to an emergency room. She was diagnosed as experiencing a panic attack. Dr. Andrews noted, "[Appellant] indicated that [Mr.] Jones' behavior was especially threatening both because he was screaming and seemed under-the-influence and out of control and also because he has intimidated and threatened other employees and apparently vandalized property in the past without suffering any consequences." Appellant believed that he could get away with anything and was fearful of her physical safety. Dr. Steward diagnosed acute stress disorder and opined that her condition was attributable to the verbally threatening, physically intimidating behavior of her coworker. He found appellant to be credible and provided work restrictions of no contact with Mr. Jones.

In a report dated February 22, 2011, Dr. Steward reported appellant's return to work on February 15, 2011 and her continued anxiety as the employing establishment had not informed her of the consequences to Mr. Jones. She stated that Mr. Jones has a preferential veteran status, had engaged in sexual harassment after verbally assaulting her and as a result the employing establishment could not guarantee her medical restrictions. Dr. Steward found that appellant was totally disabled until March 1, 2011.

Appellant completed a narrative statement and alleged that she informed Ms. Mangrobang that she was afraid of Mr. Jones. She stated that there were no witnesses as the events occurred in an isolated area.

By decision dated March 22, 2011, OWCP denied appellant's claim finding that the mechanism of injury was unclear and that there was no medical evidence containing a diagnosis related to the work incident of January 18, 2011. It found that she had not submitted sufficient evidence to substantiate and corroborate that the employment incident occurred as alleged. Appellant requested an oral hearing before an OWCP hearing representative on March 25, 2011.

Appellant submitted emergency room records dated January 20, 2011 describing her allegations of stress as the result of an outburst from a coworker who appeared to be under the influence of a controlled substance. She stated that she was concerned about her personal safety at work. The physician diagnosed stress.

Appellant testified at the oral hearing on July 27, 2011. She stated that there were witnesses, but no one was willing to become involved. Appellant stated that Mr. Jones appeared to be under the influence of some substance on January 18, 2011, which was not unusual for him. She stated that she worked closely with him, but did not interact with him. Appellant stated that while they could be together on the dock, she usually worked by herself dispatching the mail. She stated that Mr. Jones approached her asking "Who do you think you are?" Mr. Jones started acting crazy, raising his voice and appearing threatening. Appellant stated that he told her that she could not "do that to me, you don't act like...." According to appellant, Mr. Jones appeared really angry for no reason, loud and scary perhaps under the influence of a substance. Appellant stated, "See, that's the thing, it's for no reason. Some people, you know, they may be talking to themselves at work or they can, you know, whatever, but as long as they don't come to you, that's fine." Appellant noted that the consensus among her coworkers was that Mr. Jones vandalized a car in the employing establishment parking lot. She stated that coworkers witnessed this event, but that no one would report Mr. Jones. Appellant stated that he was not stable and probably did not remember the incident because of his condition. She noted that Mr. Jones did not physically assault her or threaten to harm her. The union representative noted that other women at the employing establishment had filed complaints against Mr. Jones and stated that they felt threatened for no apparent reason. The union representative stated, "I [am] not sure how he intimidates women, but one of the women ended up with her car being vandalized." Appellant noted that she returned to work after several weeks and that when she returned, she asked to be separated from Mr. Jones as she was anxious and afraid seeing him.

Ms. Culloty also testified. She stated that Mr. Jones was generally very loud, but that it would be unusual for him to approach appellant in the way that she had described without provocation.

In a statement dated August 24, 2011, Ms. Culloty stated that on January 18, 2011 appellant informed her that she was going home and asked her to go observe Mr. Jones at the dock as he was loud and acting strangely. She walked to the dock, but did not see anything unusual and no employees reported or mentioned Mr. Jones' behavior. The Postal Police responded to a call and asked about the individual who had been reported as acting inappropriately. Ms. Culloty stated that she was not aware of any physical or verbal altercation between appellant and Mr. Jones.

By decision dated September 22, 2011, OWCP's hearing representative reviewed appellant's testimony and Ms. Culloty's statement. He noted that on her claim form, appellant stated that she was subjected to "violent and threatening yelling and abuse, but that at the hearing, she described feeling threatened and felt that her coworker was angry as he stated "who do you think you are?" The hearing representative stated, "I find that the claimant did not describe at the hearing what would appear to be a violent, threatening or abusive verbal interaction with a coworker." He concluded that she had not provided the necessary

corroborating evidence to establish that a compensable employment event occurred and thus affirmed OWCP's decision.

LEGAL PRECEDENT

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*,² the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under FECA.³ There are situations where an injury or illness has some connection with the employment but nevertheless does not come within coverage under FECA.⁴ 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.⁵ In contrast, a disabling condition resulting from an employee's feelings of job insecurity *per se* is not sufficient to constitute a personal injury sustained in the performance of duty within the meaning of FECA. Thus disability is not covered when it results from an employee's fear of a reduction-in-force, nor is disability covered when it results from such factors as an employee's frustration in not being permitted to work in a particular environment or to hold a particular position.⁶

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.⁷ 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.⁸ A claimant must support his or her allegations with probative and reliable evidence. Personal perceptions alone are insufficient to establish an employment-related emotional condition.⁹

For harassment or discrimination to give rise to a compensable disability under FECA, there must be evidence that harassment or discrimination did, in fact, occur. Mere perceptions of

² 28 ECAB 125 (1976).

³ 5 U.S.C. §§ 8101-8193.

⁴ See *Robert W. Johns*, 51 ECAB 136 (1999).

⁵ *Cutler*, *supra* note 2.

⁶ *Id.*

⁷ *Charles D. Edwards*, 55 ECAB 258 (2004).

⁸ *Kim Nguyen*, 53 ECAB 127 (2001). See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

⁹ *Roger Williams*, 52 ECAB 468 (2001).

harassment or discrimination are not compensable under FECA. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.¹⁰

ANALYSIS

Appellant's primary allegation in this case is that she was subjected to verbal abuse and harassment by her coworker, Mr. Jones. The Board has addressed the factors in determining whether interaction between employees will give rise to coverage under FECA when verbal altercations or difficult relationships between employees are alleged.¹¹ The difficulty in such claims is the subjective nature of a claimant's perceptions to his or her work environment. To support a claim for compensation, the claimant must specifically delineate those factors or incidents to which the emotional condition is attributed and submit supporting factual evidence verifying that the implicated work situations or incidents occurred as alleged. Vague or general allegations of perceived harassment, abuse or difficulty arising in the employment are not sufficient to give rise to compensability under FECA.¹² In reviewing the evidence of record, the Board finds that appellant has not submitted sufficient evidence to establish as a compensable work factor any instance of verbal abuse.

Appellant alleged that a coworker Mr. Jones, threatened and abused her. She stated that he came close to her and began yelling that she was not his boss. Appellant testified that she believed that Mr. Jones was under the influence of a controlled substance. She stated that he kept yelling and gesturing. Appellant stated that she felt frightened and physically threatened because her coworker appeared to be out of control. She reported to her supervisor that Mr. Jones was loud and that she feared that he would damage her car. Appellant reported Mr. Jones alleged behavior to Ms. Culloty and called the Postal Police. The record, however, does not contain a statement from Mr. Jones and there are no witness accounts.

The evidence of record is not sufficient to establish a compensable work factor based on verbal abuse. The only evidence of alleged verbal abuse consists of appellant's statements. She has submitted no corroborative evidence.

Ms. Culloty investigated the scene immediately after appellant reported the event, and stated that she did not see anything unusual. She stated that no other employees reported or mentioned Mr. Jones' behavior. Ms. Culloty was not aware of any physical or verbal altercation between appellant and Mr. Jones. While the Postal Police investigated the alleged verbal abuse or harassment, the record does not contain a copy of a report or any documentation of the events as alleged by appellant.

¹⁰ *Alice M. Washington*, 46 ECAB 382 (1994).

¹¹ *S.R.*, Docket No. 12-82 (issued June 7, 2012); *E.H.*, Docket No. 11-798 (issued March 22, 2012); *Paul Trotman-Hall*, 58 ECAB 189 (2006).

¹² *Id.*

As there are no witness statements, no police reports and no supportive documentation from Ms. Culloty's investigation, and appellant's testimony at the hearing was inconsistent with the original allegations, the Board finds that appellant has not met her burden of proof to establish that the alleged verbal abuse or harassment occurred as alleged. Where a claimant has not established any compensable employment factors, the Board need not consider the medical evidence of record.¹³

CONCLUSION

The Board finds that appellant has not submitted the necessary evidence to corroborate that she experienced verbal abuse in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the September 22, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 6, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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

¹³ A.K., 58 ECAB 119 (2006).