

FACTUAL HISTORY

On June 10, 2011 appellant, then a 58-year-old health technician, filed an occupational disease claim alleging that, as a result of the duties of her federal employment, she sustained a rash and hives covering her shins, thighs, hip, abdomen, back, arms and neck that caused extreme itching and caused her occasional bleeding. She stated that her physician increased the dosage of her medication with no relief. In response to the query as to the relationship of her illness to her employment, appellant stated that she “contacted Union Rep. about some issues at work, and the physical effects it was having on my body.”

By letter dated June 30, 2011, OWCP wrote a letter to appellant asking that she submit further information in support of her claim.

Appellant submitted a letter dated June 21, 2011 alleging that on March 15, 2011 she was counseled by her supervisor, Debra Minchon, for failure to maintain a regular work schedule. According to her, the memorandum concerned her usage of annual leave, sick leave and leave without pay. Appellant noted that her use of leave was due to two surgeries and other medical issues that were verified by letters from the hospital. She stated that she asked a union representative to be present at the meeting because the memorandum was worded in an intimidating and threatening manner. Appellant also stated that she was prematurely accused of not telephoning in when sick, but that she left messages on a recorder and they were not heard until later in the day. She noted that she heard that Ms. Minchon was upset that someone else had approved appellant taking her birthday off, and that Ms. Minchon stated that she would not have approved it. Appellant also discussed some issues regarding lab work being drawn incorrectly. A meeting was called with regard to the incident. Appellant expressed her concern about this meeting and noted that she feared that she was going to lose her job.

Appellant alleged that the stress from these actions caused her physician to prescribe medication for anxiety. She developed hives and a rash that caused extreme discomfort. Appellant went to the Emergency Department in case she was having a reaction to the medication. She stated that Ms. Minchon had informed appellant in the past two months of her concern as to whether appellant was able to handle the telephone, make appointments and document appropriately. Appellant noted that Ms. Minchon had informed her that her duties were going to change in the near future. She noted that a bell system was set up to let her know of new patients, that it was extremely irritating and disruptive, so she unplugged the bell and would check the lobby for new arrivals. Finally, appellant stated that Ms. Minchon incorrectly accused her of sending away a patient and of giving medical advice.

The employing establishment responded to appellant’s comments by noting that a meeting had been scheduled to review appellant’s attendance and job performance and that she was notified that union representation was always welcome. The employing establishment noted that it discussed with appellant her attendance and reviewed her new work duties. Appellant was told that her duties would be limited to answering telephones, scheduling appointments and taking messages. The employing establishment noted that, after counseling, she did have fairly good attendance and a great reduction in tardiness, that she was putting great effort into learning and completing the task and that things went well until May 2011 when an issue developed with the bell system. The employing establishment stated that the bell system was instituted to

announce that Veterans were waiting for lab work, but that appellant removed the bell because she found the noise irritating and did not let clerical personnel know. As a result, labs started building up and caused frustration. The employing establishment indicated that appellant was not answering the telephone properly and that she did not always call when she was going to be late. A clerical employee advised that she called appellant several times to wake her and told her to come to work. The supervisor stated that she tried to help appellant with anxiety issues and counsel her on how to handle her duties. She noted that she overheard appellant sharing medical advice and stated that she advised appellant that this was not appropriate.³

Appellant also submitted other documents, including a copy of her resume, position description and some medical records.

By decision dated December 12, 2011, OWCP denied appellant's claim as she did not establish that an event or injury occurred.

LEGAL PRECEDENT

To establish her claim that she sustained an emotional condition in the performance of duty, a claimant must submit: (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.⁴ If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor.⁵ 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.⁶

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*,⁷ the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under FECA.⁸ There are situations where an injury or illness has some connection with the employment but nevertheless does not come within coverage under FECA.⁹ 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

³ The Board notes that, although the statement is unsigned, it appears that it was primarily prepared by appellant's supervisor Ms. Minchon.

⁴ *G.S.*, Docket No. 09-764 (issued December 18, 2009); *see also Leslie C. Moore*, 52 ECAB 132 (2000).

⁵ *Dennis J. Balough*, 52 ECAB 232 (2001).

⁶ *Id.*

⁷ 28 ECAB 125 (1976)

⁸ 5 U.S.C. §§ 8101-8193.

⁹ *See Robert W. Johns*, 51 ECAB 136 (1999).

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.¹⁰ 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.¹¹

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employing establishment 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 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.¹⁴

ANALYSIS

Appellant alleged that she sustained an emotional condition as a result of various employment incidents and conditions. OWCP denied her 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 OWCP. The Board finds that appellant has not attributed her emotional condition to regular or specially assigned duties of her position as a health technician. Therefore, she has not alleged a compensable factor under *Cutler*.¹⁵

Certain allegations made by appellant concerned personnel or administrative matters. Specifically, she alleged that she was reprimanded with regard to taking too much annual leave, sick leave and leave without pay and also about her tardiness. Appellant contended that Ms. Minchon was upset when someone else approved a day off for her birthday. She also alleged that she was accused of not following proper procedures for calling in with regard to absence and tardiness. Other allegations with regard to administrative matters include that

¹⁰ *Cutler*, *supra* note 7.

¹¹ *Id.*

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

¹³ *Kim Nguyen*, 53 ECAB 127 (2001). See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

¹⁴ *Roger Williams*, 52 ECAB 468 (2001).

¹⁵ *Supra* note 7.

appellant was told that she sent a patient away and that she improperly gave medical advice. In response to her allegations, the employing establishment discussed issues concerning her attendance and tardiness and stated that regular attendance was very important in order to best serve the Veterans. The Board has held that an administrative or personnel matter will be considered to be an employment factor only where the evidence discloses error on the part of the employing establishment.¹⁶ In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably. Appellant has failed to submit evidence that she was treated unfairly in this manner. Furthermore, she also stated that she was stressed with regard to meetings that were called with regard to some laboratory errors and with regard to her attendance issues. Appellant alleged that these meetings caused her to fear losing her job. The handling of disciplinary actions and evaluations are administrative functions of the employer and not duties of the employee.¹⁷ There is no evidence that appellant was unfairly treated with regard to these meetings. Furthermore, her allegations that the memorandum was worded in a threatening and intimidating matter and thus she did not want to attend the meeting alone are not supported by any substantive evidence, such as by submission of the memorandum. Absent evidence of such error or abuse, any reaction must be considered self-generated not employment generated.¹⁸

The Board notes that the assignment of work is an administrative function of a supervisor and, absent error or abuse, frustration at not being assigned what the employing establishment may consider meaningful work is not a compensable factor of employment but frustration from not being permitted the particular work desired.¹⁹ The Board has held that the assignment of work or the matter in which a supervisor exercises his or her discretion are administrative matters that generally fall outside the scope of FECA.²⁰ Appellant's concerns include the assignment of work clerical work and the use of a bell to alert appellant that she was needed to perform lab work. However, the Board has recognized that a supervisor or manager must be allowed to make decisions or perform duties that the employees will, at times, dislike. Mere disagreement or dislike or a supervisor's management decision will not be compensable absent evidence of error or abuse.²¹

Consequently, appellant has not established her claim for an emotional condition as she has not attributed her claimed condition to any compensable employment factors.²²

¹⁶ *Cynthia R. Harrill*, 55 ECAB 522 (2004).

¹⁷ See *Janet I Jones*, 47 ECAB 345, 347 (1996); *Jimmy Gilbreath*, 44 ECAB 55, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1267 (1988).

¹⁸ *H.B.*, Docket No. 11-2058 (issued May 8, 2012).

¹⁹ *Jose L. Gonzalez-Garced*, 46 ECAB 559 (1995).

²⁰ See *Robert Knoke*, 51 ECAB 319 (2000); *Frank B. Gwozdz*, 50 ECAB 434 (1999).

²¹ *T.G.*, 58 ECAB 189 (2006).

²² As appellant has failed to establish a compensable employment factor, the Board need not address the medical evidence of record; see *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 meet her burden of proof to establish that she 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 December 12, 2011 is affirmed.

Issued: October 4, 2012
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board