



Regarding the cause of injury, she stated, “New employee became irate with me while I was training her for HBPC [Home-Based Primary Care] on scheduling and tracking.” With respect to the nature of the claimed injury, appellant noted, “I became very shaken up, headache and elevated blood pressure, rapid heartbeat and sweating.” She noted that she would submit a statement from a witness.<sup>2</sup> On the same form, appellant’s supervisor stated that there was no evidence that violence or aggressive behavior occurred on November 1, 2011. She stated that an unspecified witness reported that the new employee was explaining something to appellant but did not act in an aggressive or violent manner.

In a November 9, 2011 letter, OWCP requested that appellant submit additional factual and medical evidence within 30 days of the date of the letter. It advised that she needed to submit a statement describing in detail what happened on November 11, 2011 between her and the new employee that she was training. Appellant was instructed to provide witness statements if there were any eyewitnesses. OWCP asked her to submit a medical report relating the November 1, 2011 incident to a diagnosed medical condition.

In another November 9, 2011 letter, OWCP requested that the employing establishment provide information within 30 days of the date of the letter, including comments from a knowledgeable supervisor on what happened between appellant and the new employee on November 1, 2011. The employing establishment was asked to provide witness statements if there were any eyewitnesses to what happened between appellant and the new employee and to specify whether an investigation was conducted regarding the matter.

Neither appellant nor the employing establishment responded to OWCP’s November 9, 2011 letters within the allotted time.

In a December 9, 2011 decision, OWCP denied appellant’s emotional condition claim on the grounds that she did not establish any compensable work factors. While she alleged a work factor when a new employee became irate with her on November 1, 2011, she did not submit any documentation with her claim. OWCP stated:

“The evidence submitted was insufficient to establish your claim because you did not describe in detail what happened on November 1, 2011 between you and this new employee. You did not specify what this new employee said to you while you were training this individual. You also did not provide any eyewitness statement substantiating what had happened between you and this individual on November 1, 2011.”<sup>3</sup>

### **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

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<sup>2</sup> Appellant stopped work on November 1, 2011 and returned the next day.

<sup>3</sup> OWCP also indicated that appellant did not submit any medical evidence in support of her claim.

concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his or her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA.<sup>4</sup> 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 his or her frustration from not being permitted to work in a particular environment or to hold a particular position.<sup>5</sup>

To the extent that disputes and incidents alleged as constituting harassment by coworkers are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors.<sup>6</sup> However, for harassment 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.<sup>7</sup>

A claimant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he or she claims compensation was caused or adversely affected by employment factors.<sup>8</sup> This burden includes the submission of a detailed description of the employment factors or conditions which the claimant believes caused or adversely affected a condition for which compensation is claimed and a rationalized medical opinion relating the claimed condition to compensable employment factors.<sup>9</sup> If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor. 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.<sup>10</sup> Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.<sup>11</sup>

### ANALYSIS

OWCP denied appellant's emotional condition claim on the grounds that she did not establish any compensable employment factors. Appellant alleged that she sustained an emotional condition on November 1, 2011 because a new employee became irate with her while she was training her. The Board must, thus, initially review whether this alleged incident is a covered employment factor under the terms of FECA. The Board notes that appellant's

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<sup>4</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>5</sup> *Gregorio E. Conde*, 52 ECAB 410 (2001).

<sup>6</sup> *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

<sup>7</sup> *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

<sup>8</sup> *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

<sup>9</sup> *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

<sup>10</sup> *Id.*

<sup>11</sup> *Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

allegations do not directly pertain to her regular or specially assigned duties under *Cutler*.<sup>12</sup> Rather, she appears to have alleged harassment by a coworker.

The Board finds that appellant did not establish that a work factor occurred on November 1, 2011 as alleged. On her Form CA-1, appellant asserted that on November 1, 2011 a new employee became irate with her while she was training her. She did not submit any additional statements to provide further details about what happened on November 1, 2011, including a description of any statements that were made or any actions that were taken by the new employee. Appellant did not provide any supporting documents, such as witness statements from others who were present on November 1, 2011. She indicated on her Form CA-1 that she would be submitting a witness statement regarding the events of November 1, 2011 but she did not submit any witness statements. In a November 9, 2011 letter, OWCP advised appellant of the type of evidence she should submit in support of her claim, but she did not respond to the letter within the allotted time. Appellant did not submit any evidence or argument in support of the Form CA-1 she filed and OWCP properly found that she did not establish a compensable work factor.

For the foregoing reasons, appellant has not established any compensable work 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.<sup>13</sup>

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 on November 1, 2011.

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<sup>12</sup> See *Cutler*, *supra* note 4.

<sup>13</sup> As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; see *Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 9, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 17, 2012  
Washington, DC

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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

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