

FACTUAL HISTORY

On April 12, 2011 appellant, then a 47-year-old support services supervisor on the central scheduling unit (CSU), filed an occupational disease claim alleging that she sustained an emotional condition. She alleged being harassed by Forrest A. Tucker, Assistant Chief of Medical Administration Services (MAS), who had been very rude, undermined her and gave her unfair performance appraisals. Appellant attributed this to the fact that she supervised his wife, an employee.

In an April 26, 2011 letter, OWCP informed appellant of the evidence needed to support her claim. In a May 4, 2011 statement, appellant noted that she reported to Mr. Tucker, who worked in a different physical location, when she began work at the CSU in October 2007. When she discovered that his wife, Susie Tucker, worked in the CSU, she asked that his wife be removed because it would be a conflict of interest for her to report directly to Mr. Tucker but she was not removed. Appellant stated that Ms. Tucker became very rude and insubordinate, walked out of staff meetings, would not reply to questions or complete assignments. Mr. Tucker was always rude and unprofessional. When appellant gave assignments to her staff, the employees called him to complain and he would then call her to change directions, always taking the employee's side. She alleged the forthcoming instances: (1) she assigned a specific shift to an employee who needed retraining because of a long absence, the employee called Mr. Tucker who changed the employee's shift; (2) she asked an employee who slept at work to move her desk so that appellant could observe her, the employee called Mr. Tucker who told appellant that the employee could not be moved; (3) she asked Mr. Tucker if an employee, who was physically and verbally abusive could be removed, Mr. Tucker walked out of the meeting; (4) she gave written counseling to an employee who was absent every Monday and Friday, Mr. Tucker told her to post the employee's time off as sick or annual leave and not absent without leave; (5) she gave an "hour off" bonus to an employee, the employee would not take the bonus hour when appellant wanted her to take it and called Mr. Tucker, who told appellant that the employee could use the bonus hour whenever she wanted; and (6) she counseled an employee who completed school assignments at work, the employee called Mr. Tucker who told appellant that the employee could do the assignments at work.

Appellant stated that Mr. Tucker would not reply to e-mails or return telephone calls and if he did, he was rude and rushed her off the telephone; that he would not visit the Lyons Campus where she was located or give sufficient administrative direction and that he had never supported her in dealing with staff issues. She stated that he gave her an unfair performance appraisal until she argued about it and he then raised it. Appellant asserted that Mr. Tucker did not acknowledge her achievements. She stated that she had filed a complaint with the Equal Employment Opportunity (EEO) Commission and Merit Systems Protection Board (MSPB). Appellant stated that she was not sleeping and could not focus on work and concluded that Mr. Tucker was retaliating against her due to her work relationship with his wife, who was very insubordinate and did not respect appellant. She attached a job description, a "self assessment" for the period October 1, 2008 to September 30, 2009 and "report of contact" dated December 16, 2008 in which she reported problems with Ms. Tucker to Spring Chen Strickland, her then supervisor.

In performance appraisals dated November 12, 2010 and May 17, 2011, Mr. Tucker rated appellant “fully successful.” The 2010 appraisal was reviewed by Mia Powers, chief, MAS, who agreed that she should be rated “fully successful.”

In reports dated April 14, 2011, Dr. Sang K. Nam, a Board-certified psychiatrist, noted appellant’s complaint that she was not eating or sleeping and could not focus due to increased stress from a supervisor. Appellant had been on sick leave for about 10 days. Dr. Nam diagnosed acute stress disorder and possible post-traumatic stress disorder, prescribed medication and advised that she should not return to work until at least April 21, 2011. On April 21, 2011 he reiterated his diagnoses and advised that appellant would remain incapacitated until July 14, 2011. On April 21, 2011 appellant was improved and could return to work on April 25, 2011. On April 28, 2011 Dr. Nam indicated that appellant had returned to work and was fine until that day when she became tearful when discussing her situation with a supervisor.

In letters dated May 23 and 24, 2011, OWCP asked the employing establishment to respond to appellant’s claim. On June 20, 2011 the employer disputed the claim and attached a June 12, 2011 statement from Mr. Tucker. He noted that appellant did not report directly to him when she began work at the CSU but reported directly to the chief of MAS until March 1, 2009, when the chief of MAS resigned and Mr. Tucker became acting chief. At that time his wife, a contract employee, no longer worked in CSU but in another unit from which she resigned on December 22, 2009. Mr. Tucker stated that he had not previously heard any complaints about his wife’s insubordination, rudeness or unacceptable behavior and disputed appellant’s account that he was unpleasant, rude and unprofessional. He disputed each of appellant’s specific allegations, noting that he told an employee, who was returning from serious surgery, to report for duty at her usual time but to clarify this with appellant; that he told appellant that it would be embarrassing to move someone’s desk as if in grade school; and that he never walked out on a meeting with appellant. Mr. Tucker stated that he had never been informed of a physical incident at CSU. Regarding the employee who received an hour award, he stated that human resources informed him that there was no time limit when the employee could use the bonus hour. Mr. Tucker told appellant that, if an employee worked on school work on a regular basis at work, she should address the issue. After March 2009 he performed the functions of two positions, as chief and acting chief of MAS. This did not leave Mr. Tucker time to regularly visit CSU. He relied on appellant to handle all aspects of CSU. Mr. Tucker visited the unit every two weeks at a minimum and answered her e-mails and calls but she rarely asked for assistance. He received complaints from her staff about work being assigned unequally, not being allowed to attend training and that appellant had yelled at them, giving contrary directions and accusing them of errors. Mr. Tucker referred the staff to her for most complaints and asked them to submit them in writing.

Mr. Tucker stated that a contractor agency advised him that appellant was harassing its workers and firing them without justification. In July 2010, Ms. Powers was named chief of MAS and he retained his position as assistant chief. At that time, Mr. Tucker asked not to be assigned to CSU but was told by Ms. Powers that he should continue managing the unit. Since that time he reported to CSU one or two days a week and met with appellant. Mr. Tucker stated that during that time two contract employees complained about their desks being moved so that they could be monitored and they complained about the high volume of work, but feared job loss if they complained to appellant. On March 29, 2011 he spoke with appellant about these

allegations. Mr. Tucker stated that 80 percent of her staff had concerns about the work environment and named nine employees, including a physician and a patient, who had complained about her. He noted that she became very emotional and started crying. Mr. Tucker told her he would visit twice weekly to observe her staff and shortly thereafter she filed an EEO complaint. He stated that he had never harassed or disrespected appellant but tried to assist her in becoming a better manager.

In an October 19, 2011 decision, OWCP accepted compensable factors of employment were established because the employing establishment did not refute appellant's statement. It indicated that Mr. Tucker's decisions to repeatedly reverse decisions appellant made while exercising her supervisory discretion had a direct effect on her ability to perform her daily duties as a supervisor. OWCP denied the claim finding that the medical evidence did not address the accepted factors of employment.

On November 2, 2011 appellant requested reconsideration. She submitted an additional April 21, 2011 report, in which Dr. Nam advised that she wanted to return to work on April 25, 2011 but was fearful and that she had a positive response to medication. In a May 5, 2011 treatment note, Dr. Nam noted her complaint that she felt anxious when she went to work, did not feel secure and was not sleeping well.

By letter dated December 16, 2011, Mr. Tucker noted that he had responded to appellant's allegations in a June 12, 2011 statement. He stated that anytime he tried to inquire or investigate a complaint with appellant, she would go to the EEO Commission. In December 19, 2011 correspondence, the employer asked OWCP to review Mr. Tucker's June 12, 2011 statement in which each of the accepted factors of employment were discussed.

In a January 9, 2012 statement, appellant noted that Mr. Tucker would not allow her to supervise the CSU staff without interrupting and interfering. Mr. Tucker allowed staff to bypass her direct authority; allowed them to break the chain of command; and made decisions regarding her staff and department without asking for her input such that her employees did not respect her authority. Appellant stated that he took the employee's word without investigating and opposed her at every opportunity. She described the problems she had with employees she supervised that were referenced in Mr. Tucker's statement, as well as problems with an employing establishment physician and a patient. Appellant asserted that Mr. Tucker falsified his statement and did not visit her office as he alleged, that he grossly mistreated her, belittled her in front of staff and behind closed doors and would not approve requested sick leave. She stated that in January 2011 Ms. Powers was named chief of MAS and that in June 2011 she was assigned a new supervisor, Donald Chambers and since that time she was treated well and given support, including better performance appraisals. Appellant attached a copy of a February 7, 2011 e-mail, in which she asked to be assigned another supervisor and a November 1, 2011 performance appraisal in which she was rated "fully successful" by Mr. Chambers.

In a merit decision dated February 10, 2012, OWCP vacated the October 19, 2011 decision. It denied appellant's claim finding that she failed to establish any compensable factor of employment. OWCP noted Mr. Tucker's statement and found that the previously accepted factors did not occur in the performance of duty because they were not accepted as factually correct or remained unverified.

LEGAL PRECEDENT

To establish her claim that she sustained an emotional condition in the performance of duty, appellant must submit the following: (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.² If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor.³ 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.⁴

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*,⁵ the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under FECA. There are situations where an injury or illness has some connection with the employment but nevertheless does not come within coverage under FECA.⁶ 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.⁷ Allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.⁸ Where the claimant alleges compensable factors of employment, he or she must substantiate such allegations with probative and reliable evidence.⁹ Personal perceptions alone are insufficient to establish an employment-related emotional condition.¹⁰

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regular or specially

² *Leslie C. Moore*, 52 ECAB 132 (2000).

³ *Dennis J. Balogh*, 52 ECAB 232 (2001).

⁴ *Id.*

⁵ 28 ECAB 125 (1976).

⁶ *See Robert W. Johns*, 51 ECAB 137 (1999).

⁷ *Lillian Cutler*, *supra* note 5.

⁸ *J.F.*, 59 ECAB 331 (2008).

⁹ *M.D.*, 59 ECAB 211 (2007).

¹⁰ *Roger Williams*, 52 ECAB 468 (2001).

assigned work duties of the employee and are not covered under FECA.¹¹ 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.¹²

For harassment or discrimination to give rise to a compensable disability, there must be evidence introduced which establishes that the acts alleged or implicated by the employee did, in fact, occur. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. A claimant must establish a factual basis for his or her allegations that the harassment occurred with probative and reliable evidence.¹³ With regard to emotional claims arising under OWCP, the term “harassment” as applied by the Board is not the equivalent of “harassment” as defined or implemented by other agencies, such as the EEO Commission, which is charged with statutory authority to investigate and evaluate such matters in the workplace. Rather, in evaluating claims for workers’ compensation under FECA, the term “harassment” is synonymous, as generally defined, with a persistent disturbance, torment or persecution, *i.e.*, mistreatment by co-employees or workers. Mere perceptions and feelings of harassment will not support an award of compensation.¹⁴

ANALYSIS

When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is deemed compensable.¹⁵ The Board must, thus, initially review whether the incidents and conditions of employment alleged by appellant to have caused her condition are covered employment factors under FECA.

Appellant alleged that her claimed condition arose from her supervisory duties. She had to deal with issues regarding the employees she supervised. Appellant identified several employees, including Ms. Tucker, and described problems with her staff including an employee who slept at work, an employee who would not call to report absences, an employee who would complete school assignments at work and an employee who complained about her shift. The Board finds that the evidence of record is sufficient to establish that appellant was in the performance of her regular managerial duties dealing with the issues regarding supervising her staff. A *Cutler* factor has been established.¹⁶ As such, it is a compensable factor of employment. Appellant, however, failed to establish an additional factor of employment.

¹¹ *Charles D. Edwards*, 55 ECAB 258 (2004).

¹² *Kim Nguyen*, 53 ECAB 127 (2001).

¹³ *James E. Norris*, 52 ECAB 93 (2000).

¹⁴ *Beverly R. Jones*, 55 ECAB 411 (2004).

¹⁵ *Penelope C. Owens*, 54 ECAB 684 (2003); *see Lillian Cutler*, *supra* note 5.

¹⁶ *Lillian Cutler*, *supra* note 5.

Generally, actions of the employer in administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties, do not fall within coverage of FECA.¹⁷ Absent evidence establishing error or abuse, a claimant's disagreement or dislike of such a managerial action is not a compensable factor of employment.¹⁸ In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employer acted reasonably.¹⁹ In this case, appellant alleged that Mr. Tucker did not rate her fairly and improperly denied a leave request. Although the handling of evaluations and leave requests are generally related to the employment, they are administrative functions of the employer and not duties of the employee.²⁰ Absent error or abuse, these allegations would not be compensable employment factors and in this case, the record does not show error or abuse by the employer. The record contains three performance appraisals and in all three appellant was rated fully successful. Mr. Tucker rated appellant in November 2010 and May 2011 and the 2010 appraisal was reviewed and agreed with by Ms. Powers. In November 2011, Mr. Chambers also rated appellant fully successful. Perceptions of unfair treatment are not enough to establish error or abuse. A claimant must submit real proof that management did in fact commit error or abuse.²¹ Appellant submitted no evidence regarding the denial of leave. She, thus, did not demonstrate error or abuse regarding these administrative matters.²²

In regard to her allegation that she was not supported by Mr. Tucker in dealing with her employees, generally, complaints about the manner in which a supervisor performs his or her duties or the manner in which a supervisor exercises his or her discretion fall, as a rule, outside the scope of coverage provided by FECA. This principle recognizes that a supervisor or manager in general must be allowed to perform his or her duties and employees will, at times, dislike the actions taken. Mere disagreement or dislike of a supervisory or managerial action will not be compensable, absent evidence of error or abuse.²³ Mr. Tucker explained that, when he supervised appellant, he was performing the duties of two positions, as acting chief and assistant chief of MAS, which placed limitations on his schedule. He stated that during this period he relied on appellant to manage the CSU. Allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim but rather must be corroborated by the evidence.²⁴ Disagreement with or dislike of actions taken by a supervisor or manager will not be compensable absent evidence establishing error or abuse.²⁵ Appellant did not provide sufficient evidence to substantiate wrongdoing by Mr. Tucker. There are no

¹⁷ *J.C.*, 58 ECAB 594 (2007).

¹⁸ *Donney T. Drennon-Gala*, 56 ECAB 469 (2005).

¹⁹ *Lori A. Facey*, 55 ECAB 217 (2004).

²⁰ *C.S.*, 58 ECAB 137 (2006).

²¹ *L.S.*, 58 ECAB 249 (2006).

²² *Kim Nguyen*, *supra* note 12.

²³ *Id.*

²⁴ *M.D.*, *supra* note 9.

²⁵ *Linda J. Edwards-Delgado*, 55 ECAB 401 (2004).

statements or other evidence in corroboration of her allegations. In fact, the record contains a December 16, 2008 report of contact that was sent to Ms. Strickland and not to Mr. Tucker. The record contains no evidence that any employing establishment supervisor or manager, including Mr. Tucker, committed error or abuse in discharging management duties.²⁶ This therefore would not be a compensable factor of employment.

Concerning appellant's claim that Mr. Tucker harassed her by being disrespectful and belittled her both in private and in front of her employees, mere perceptions of harassment or discrimination are not compensable under FECA²⁷ and unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. A claimant must establish a factual basis for her allegations with probative and reliable evidence.²⁸ She submitted nothing to support specific incidents or actions by Mr. Tucker to show a persistent disturbance, torment or persecution, *i.e.*, mistreatment by employing establishment management.²⁹ Appellant therefore did not establish a factual basis for her claim of harassment by probative and reliable evidence.³⁰ Moreover, although she indicated that she had filed EEO and MSPB claims, the record does not contain either of the claims and does not contain any decisions from the EEO Commission or MSPB.

As appellant established a compensable factor of employment regarding her regular supervisory duties under *Cutler*, the medical evidence must be analyzed.³¹ In reports dated April 14, 2011, Dr. Nam, an attending psychiatrist, noted her complaint that she was not eating or sleeping and could not focus due to increased stress from a supervisor. He diagnosed acute stress disorder, rule-out post-traumatic stress disorder and noted that appellant wanted to return to work on April 25, 2011 but was fearful. Dr. Nam provided contradictory information regarding dates that she could return to work, stating that she could return on April 25, 2011 but also stating that she could not return until July 14, 2011. On April 28, 2011 he stated that appellant had returned to work and was fine until that day when she became tearful when discussing her situation with a supervisor. In a May 5, 2011 treatment note, Dr. Nam noted that she complained that she felt anxious when she went to work, did not feel secure and was not sleeping well. To be of probative medical value, a physician's opinion regarding the cause of an emotional condition must relate the condition to the specific incidents or conditions of employment accepted as factors of employment, must be based on a complete and accurate factual history and must contain adequate medical rationale in support of the conclusions.³² While Dr. Nam diagnosed an acute stress disorder, he did not provide a clear opinion on causal relationship. He generally referenced appellant's complaint that she was stressed by a supervisor

²⁶ See *David C. Lindsey, Jr.*, 56 ECAB 263 (2005).

²⁷ *James E. Norris*, *supra* note 13.

²⁸ *Id.*

²⁹ *Beverly R. Jones*, *supra* note 14.

³⁰ See *Robert Breeden*, 57 ECAB 622 (2006).

³¹ See *Dennis J. Balogh*, *supra* note 3.

³² *Mary J. Ruddy*, 49 ECAB 545 (1998).

and felt fearful about returning to work. Dr. Nam did not address how her duties as a supervisor caused or contributed to her emotional condition.

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 failed to establish that she sustained an employment-related emotional condition causally related to the accepted employment factor.

ORDER

IT IS HEREBY ORDERED THAT the February 10, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 6, 2012
Washington, DC

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

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

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