

**United States Department of Labor
Employees' Compensation Appeals Board**

H.D., Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL
CENTER, Marion, IL, Employer**

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**Docket No. 12-1246
Issued: April 11, 2013**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On May 18, 2012 appellant filed a timely appeal from the May 2, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her emotional condition claim. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained an emotional condition in the performance of duty.

FACTUAL HISTORY

On February 15, 2012 appellant, then a 31-year-old nurse, filed a claim for occupational disease, alleging an emotional condition as a result of her federal work conditions. She

¹ 5 U.S.C. § 8101 *et seq.*

explained that working in a small cubicle aggravated her depression and anxiety, which included extreme claustrophobia. Appellant first became aware of her condition on December 1, 2011 and realized it was causally related to her employment on December 29, 2011. She had mentioned her working conditions to her supervisor several times and provided physician's notes as required.

On March 6, 2012 appellant related that she had noticed that her anxiety became heightened as soon as she was moved to a cubicle. She asked numerous times to be moved for her panic attacks. Appellant had been hospitalized once for postpartum depression over five years prior.

On March 27, 2012 OWCP requested that appellant submit further factual and medical evidence in support of her claim.

In a statement dated April 25, 2012, the employing establishment controverted appellant's claim. It noted that she had informed her supervisor on more than one occasion that she had ongoing personal problems related to a divorce, the custody of her son and being a single parent with little support, all of which contributed to her anxiety and stress.

On April 28, 2012 OWCP received supervisory notes from the employing establishment. The notes document that appellant was reassigned to a cubicle on the second floor on November 14, 2011. On that day, she had related that she was not sure she could work in the assigned cubicle because she felt claustrophobic in that area. Appellant was advised that the only other work space was another identical cubicle. She was requested to try the new work location and determine whether there was a problem. The November 16, 2011 supervisory notes state that appellant related that, when she started moving into the cubicle, she did not believe that she could work there as she was claustrophobic. She was advised that she could submit a reasonable accommodation request, through the occupational health nurse. In an e-mail dated November 16, 2011, appellant wrote to her supervisor: "Is there any way you could ask the space committee if I could use that empty cubicle?" On December 29, 2011 it was noted that she had been hospitalized from December 8 to 20, 2011. Appellant returned to work on December 27, 2011. On December 29, 2011 she relocated her work area to another desk, without prior supervisory knowledge. Appellant was again hospitalized on December 29, 2011.

Appellant submitted psychiatric assessments by Dr. Naeem A. Qureshi, a Board-certified psychiatrist, dated September 11, 2011 to March 28, 2012. Dr. Qureshi diagnosed major depressive disorder, personality disorder, bipolar disorder and anxiety disorder and recommended that she remain off work for a period of time. He noted that appellant had a long history of mental illness and listed the possible causes of her condition as divorce, health issues, occupational problems, limited coping skills and relationship issues.

A memorandum dated April 5, 2012 from the employing establishment advised that appellant had been assigned to part-time transitional duty as a result of her anxiety and claustrophobia.

In a May 2, 2012 decision, OWCP denied appellant's claim on the grounds that she had failed to establish a compensable factor of employment in the performance of duty.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that the injury was sustained in the performance of duty. The employee must also establish that any disability and specific condition for which compensation is claimed is causally related to the employment injury.²

To establish that he or she sustained an emotional condition in the performance of duty, a claimant must submit the following: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to his or her condition, (2) rationalized medical evidence establishing that she has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.³

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 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.⁴ 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.⁵

With regard to personnel and administrative matters, the Board has held that these are generally related to the employment as functions of the employer rather than the work duties of the employee.⁶ Generally, actions taken unrelated to the employee's regular or specially assigned work duties do not fall within coverage of FECA.⁷ An administrative or personnel matter will be considered as a compensable factor where the evidence of record establishes error or abuse on the part of managers or supervisors.

² *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Trudy A. Scott*, 52 ECAB 309 (2001); *see Lillian Cutler*, 28 ECAB 125 (1976).

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *See Lillian Cutler*, *supra* note 3.

⁶ *See David C. Lindsey, Jr.*, 56 ECAB 263 (2005).

⁷ *See Donny T. Drennon-Gala*, 56 ECAB 469 (2005); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

ANALYSIS

OWCP denied appellant's claim by decision dated May 2, 2012 finding that she failed to establish a compensable factor of employment. The Board will affirm the May 2, 2012 decision, on the grounds that she has not established that her emotional condition arose from a factor of her work as a nurse.

In denying the claim, OWCP relied on *Tanya A. Gaines*,⁸ which stated that "frustration at not being permitted to work in a particular environment is not a covered factor of employment under FECA." However, OWCP's reliance on this case is misplaced. In *Gaines*, the crux of the claimant's complaint was that she was a highly motivated employee, who wanted praise for her work and advancement to a GS-11 position. The Board noted that the employer was not claiming that her emotional condition arose because she could not perform her regular or specially assigned employment duties; on the contrary, appellant's frustration arose because she was not promoted to a position she felt she deserved.⁹

In *Lillian Cutler*,¹⁰ a case which also involved an employee becoming upset over not receiving a promotion, the Board distinguished the scenarios where an employee has a disabling emotional condition having some kind of causal relationship to the employment. The Board stated the following:

"Where an employee experiences emotional stress in carrying out his employment duties or has fear and anxiety regarding his ability to carry out his duties and the medical evidence establishes that the disability resulted from his emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of the employment. This is true where the employee's disability resulted from his emotional reaction to his day-to-day duties. The same result is reached where the emotional disability resulted from the employee's emotional reaction to a special assignment or requirement imposed by the employing establishment or by the nature of his work.

"In contrast ... assuming that appellant was unhappy doing inside work, desired a different job, brooded over the failure to give him the kind of work he desired for which the establishment considered him unsuitable and as a result of such brooding appellant became emotionally disturbed, causing an outbreak of dermatitis; this does not establish 'a personal injury sustained while in the performance of duty' within the meaning of FECA."

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⁹ *Id.*

¹⁰ *Lillian Cutler*, *supra* note 3.

In the present case, appellant alleged that she was relocated to work in a small cubicle. In *Len V. Frost*,¹¹ the relocation of a work group resulted in the erection of a wall between coworkers. The Board noted as follows:

“Insofar as appellant’s emotional condition is attributed to his frustration at failing to effect desired changes in the work environment, it is not covered under [FECA]. Assignment of work duties and work space is a management prerogative, so that appellant’s reaction to his assignment of work space would be covered only if he could establish error or abuse by the employing establishment, which he has not done.

What can be covered under [FECA] however is appellant’s reaction to his actual physical work environment. Appellant attributed his emotional condition not only to the assignment of space and the refusal of his supervisor to change this assignment, but also to the closeness of the space itself, stating that it resulted in isolation and claustrophobia which led to distress and anxiety attacks.”¹²

Appellant alleged claustrophobia due to working in a cubicle on December 1, 2011 and attributed its relationship to her employment on December 29, 2011. The supervisory notes from the employing establishment indicate that she related concerns regarding claustrophobia upon her reassignment to a cubicle on November 14, 2011. On November 16, 2011, however, appellant e-mailed her supervisor inquiring as to whether she could work in a different empty cubicle. She has not explained why working in the assigned cubicle, but not the empty cubicle, gave rise to claustrophobia; rather, the evidence reflects her preference to work in one part of the office space over another. Appellant has not explained why the assigned cubicle would give rise to the alleged condition. The Board also finds that she has not submitted any medical evidence in fact diagnosing claustrophobia, or relating any of her other diagnosed conditions to working in a cubicle.¹³

The Board finds that appellant has not established a factual basis for her emotional condition claim. Appellant has not discharged her burden of proof to establish an emotional condition in the performance of duty.

Appellant may request modification of the wage-earning capacity determination, supported by new evidence or argument, at any time before OWCP.

CONCLUSION

The Board finds that appellant failed to meet her burden of proof to establish that she sustained an emotional condition in the performance of duty.

¹¹ Docket No. 95-2837 (issued October 8, 1997).

¹² See also *Kathleen D. Walker*, 42 ECAB 603 (1991); *Brenda Getz*, 39 ECAB 245 (1987).

¹³ See *C.W.*, Docket No. 10-1043 (issued February 17, 2011).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 2, 2012 is affirmed.

Issued: April 11, 2013
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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