

anxiety and depression with consequential migraines, hypertension and hyperglycemia due to the following disciplinary actions: issuance of a February 25, 2008 letter of warning as appellant put a van in storage with a sack of express mail still inside; an October 28, 2009 letter of warning for not dispatching mail on time on October 21, 2009; a February 13, 2010 5-day suspension for using a postal vehicle without authorization on January 17, 2010 and failure to timely expedite three vans of mail; an April 27, 2010 14-day suspension for failing to scan mail container labels on March 21 and 28, 2010, resulting in delayed mail; a May 18, 2010 14-day suspension for being present on postal premises without authorization on 7 dates in February and March 2010 and a verbal altercation with, driver, Kenneth Mitchell with whom she had a dating relationship in 2001;² a May 18, 2010 just cause interview regarding the 14-day suspension in which Robert Felix, supervisor, momentarily blocked her from leaving his office by putting his arm across the doorway; June 16 and 29, 2010 notices of removal for a pattern of malfeasance and misconduct, including failure to follow procedures in dispatching mail on May 10, 2010; rescission of the June 16, 2010 notice of removal. She also alleged reprisal for her union activities from 1986 to 2010 and for filing Equal Employment Opportunity (EEO) grievances.

Appellant denied any and all wrongdoing, asserting that her supervisors fabricated all accusations against her. She attributed her condition to frustration over conflicting supervisory instructions from April 25, 2008 to December 11, 2009, and to her supervisors not assigning overtime in accordance with union procedures, resulting in her working six days a week from January 16 to February 12, 2010. Appellant also attributed her condition to: anxiety over Mr. Felix assigning her to three docks simultaneously and moving her from the east dock on January 17, 2010 in violation of safety protocols; Mr. Felix telling coworkers on January 18 and April 26, 2010 that he planned to terminate appellant; being informed by a coworker on April 26, 2010 that Mr. Felix stated that he would terminate her; being denied use of a postal vehicle to travel to and from the van yard; being banned from the transport office on March 27, 2010 for being on site without permission; and a supervisor using her scanner on May 22, 2010 to set her up on false disciplinary charges. She also alleged that supervisors failed to provide her with standard operating procedures for expediter and dispatch protocols. Appellant noted that OWCP accepted an emotional condition claim in 1990, resulting in restrictions against working under certain supervisors.

Appellant submitted copies of each disciplinary action to which she attributed her condition, as well as transportation tracking forms which she asserted showed that she was not at fault for delaying mail on any of the dates listed. She also provided statements in March, May and July 2010 from 11 coworkers asserting that Mr. Felix singled her out for disciplinary action, as other expediters were not penalized for similar misconduct.

In January 16, 17, 24, April 6 and June 20, 2010 statements, Mr. Felix stated that he investigated an alleged December 2001 physical assault and February 18, 2010 verbal altercation by appellant against coworker, Mr. Mitchell, whom she dated in 2001. Mr. Mitchell filed a police report in 2001 stating that appellant threw hot coffee in his face, but he did not press charges. On January 17, 2010 appellant refused to cooperate with a disciplinary interview into

² Appellant submitted a May 18, 2010 14-day suspension letter alleging that she called, driver, Mr. Mitchell, a “punk b---h” and/or “punk mother f--ker” on February 18, 2010 while she was on postal premises without authorization on her scheduled day off, harassed Mr. Mitchell on March 25, 2010 and entered the employing establishment without permission on seven dates from February 17 to March 25, 2010.

her failure to place vans in the proper stalls and comply with supervisory instructions for van placement. Mr. Felix determined that, on February 18, 2010, she was on postal premises without authorization on her scheduled day off. Appellant accused Mr. Mitchell of tampering with her campaign flyers and called him a “Punk B---h.” She also appeared at the transportation office on March 27, 2010, her scheduled day off, to conduct union campaign activities. During her shift on June 20, 2010, appellant failed to dispatch a van as directed for the Los Angeles run, left the dock, failed to process the Santa Ana dispatch and failed to put a van in a stall for the Fresno dispatch. In just cause and other investigative interviews, appellant categorically denied any wrongdoing. Mr. Felix concluded that there was sufficient evidence of appellant’s misconduct and malfeasance to warrant the disciplinary actions against her.

In a July 20, 2010 statement, one of appellant’s coworkers noted that, on January 17, 2010, she called appellant to advise her that a truck was coming into their dock and that the “Denver driver was waiting.”

In an August 30, 2010 statement, Supervisor Felix stated that, although there were no standard operating procedures, all of appellant’s duty requirements were detailed in her written job description. She had worked on the platform as an expeditor for more than three years and should have understood the varying tasks required depending upon the flow and routing of mail. These duties required labeling and logging mail according to her written job description, expediting mail and van routing. Although expeditors were not authorized to use postal vehicles as their duties did not require them, appellant signed out a vehicle without permission as she “did not want to walk the yard to locate [her] vans.” On January 17, 2010 Mr. Felix assigned appellant to one dock, then a second when she had finished her duties on the first. The third dock was closed for construction. Appellant violated instructions by moving vans containing mail, resulting in mail falling from a van and being destroyed due to rain. Mr. Felix confirmed that he told one of appellant’s coworkers on January 18, 2010 that, if she continued to behave like appellant, she would end up with a bad attitude like appellant. He noted that his remarks did not indicate an intention to terminate appellant. Mr. Felix stated that, on February 18, 2010, appellant appeared at the transportation office on her day off to post her union campaign flyers. Appellant accused Mr. Mitchell of removing her flyers, called him an obscenity then called a coworker and repeated her remarks. On April 26, 2010 Mr. Mitchell told an expeditor that she would “be fired just like [appellant] if she did not perform her duties.” He confirmed that, on June 29, 2010, appellant was issued a notice of removal that was rescinded on the same day. On May 18, 2010 when Mr. Felix issued appellant a 14-day suspension, she tried to remove the notice from his office without signing it. He stated that he momentarily blocked the office doorway with his arm, instructing appellant to either sign the notice or inform him that she refused to sign it. Appellant then signed the notice and complained of anxiety and chest pains. Postal Police called an ambulance and appellant was transported to a hospital. Mr. Felix denied that he or any other supervisor harassed, intimidated, threatened, abused or discriminated against appellant.

In an August 31, 2010 letter, a retired postal supervisor asserted that, from 1985 to 2009, expeditors were allowed to use postal vehicles to perform their duties.

In a July 15, 2010 report, Dr. Ruth Fallenbaum, an attending licensed clinical psychologist, related appellant’s account of harassment and disciplinary actions in the workplace. She diagnosed adjustment disorder with mixed anxiety and depression.

Dr. Fallenbaum asserted that appellant felt harassed by illogical disciplinary actions, causing recrudescence of previously resolved dysthymia.

By decision dated January 26, 2011, OWCP denied appellant's claim finding that she failed to establish any compensable employment factors. It found a lack of sufficient evidence to establish her allegations regarding the February 25, 2008, October 28, 2009, April 27, May 18, June 16 and 29, 2010 disciplinary actions based on documented nonfeasance, and no harassment or disparate treatment was established. OWCP found that there was no proof that she was harassed for not being allowed to use a postal vehicle; that she was assigned to three docks simultaneously on January 17, 2010 or harassed on March 25 and 27, 2010 when barred from the transportation office, or that a supervisor misused her scanner on May 22, 2010. OWCP advised that the following factors were factual, but not compensable: not being provided standard operating procedures as the document did not exist; working six days a week from January 16 to February 12, 2010, as no overtime assignment violations were shown; Mr. Felix momentarily placed his arm across his doorway on May 18, 2010 which did not rise to the level of constructive imprisonment; his remarks to appellant's coworkers on January 18 and April 26, 2010 were not made to appellant; a lack of uniformity in supervisory directions from April 25, 2008 to December 11, 2009, as appellant's duties varied with each work shift and required flexibility in prioritizing.

In a February 25, 2011 statement, appellant requested a hearing that was held on June 27, 2011. She asserted that she always followed proper work procedures so the charges against her were fabricated, and that she was not instructed in proper procedures so the charges against her were disparate discipline. Appellant submitted her contentions regarding each disciplinary action against her, asserting that she had not done anything wrong and that she made mistakes due to conflicting or insufficient instructions.

In March 28 and April 30, 2010 statements, Mr. Mitchell stated that in December 2001, appellant threw a cup of hot coffee in his face after he ended their dating relationship. On March 25, 2010 appellant appeared outside the transportation office and yelled at him to come out. She submitted an April 14, 2010 coworker's statement alleging that Mr. Mitchell spoke badly of appellant.

By decision dated and finalized September 20, 2011, an OWCP hearing representative affirmed the January 26, 2011 decision, finding that the evidence was insufficient to establish administrative error or abuse. The hearing representative further found that appellant's statements, and those of her coworkers, were too general or vague to establish her allegations of harassment, disparate treatment and false charges.

In an April 23, 2012 letter, appellant requested reconsideration, asserting that the employing establishment erred in issuing a five-day suspension on February 13, 2010.³ She submitted a February 2, 2012 letter from the employing establishment, reducing an October 28, 2009 letter of warning to an official discussion, and a February 3, 2012 employer letter reducing a February 13, 2010 five-day suspension to a letter of warning. Appellant also provided a

³ Appellant filed a claim for recurrence of disability on April 23, 2012. In a May 7, 2012 letter, OWCP advised appellant that the claim for recurrence of disability was not in posture for a decision due to the pending request for reconsideration.

February 16, 2012 final grievance arbitration panel award, finding “substantive errors” by appellant’s supervisors in issuing the February 13, 2010 suspension and February 3, 2012 letter of warning, including “overcharging grievant with certain contract violations.” The arbitrator found that, at a February 14, 2012 grievance hearing, Mr. Felix’s testimony established that, on January 17, 2010, he violated a directive prohibiting assigning an employee from the east dock to another dock, then failed to conduct a fair and thorough just cause interview. The arbitrator found that the letter of warning should be expunged from appellant’s record due to substantive procedural errors.

An April 5, 2012 report from Dr. Fallenbaum noted that the February 13, 2010 notice of suspension “trigger[ed] some psychological symptoms.” A subsequent pattern of supervisory harassment as related by appellant led to severe anxiety and depression. Dr. Fallenbaum diagnosed adjustment disorder with mixed anxiety and depression.

In a July 27, 2012 decision, OWCP modified its September 20, 2011 decision to find that appellant established a compensable employment factor. The February 16, 2012 arbitration award established procedural errors by her supervisor bringing the disciplinary letter. However, appellant did not establish causal relationship, as Dr. Fallenbaum’s reports did not contain sufficient medical rationale explaining how the February 13, 2010 five-day suspension or February 3, 2012 letter of warning caused her emotional condition. OWCP also found that she did not establish any other compensable factors of employment.

LEGAL PRECEDENT

FECA provides for payment of compensation for personal injuries sustained while in the performance of duty.⁴ Where disability results from an employee’s 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.⁵ To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.⁶ This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.⁷

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing disability, OWCP, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship.⁸ If a claimant implicates a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor. When the matter

⁴ 5 U.S.C. § 8102(a).

⁵ 5 U.S.C. §§ 8101-8193. *Lillian Cutler*, 28 ECAB 125 (1976).

⁶ *Ruthie M. Evans*, 41 ECAB 416 (1990).

⁷ *Effie O. Morris*, 44 ECAB 470 (1993).

⁸ *See Norma L. Blank*, 43 ECAB 384 (1992).

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.⁹

ANALYSIS

Appellant did not attribute her emotional condition to the performance of her regular or specially assigned duties under *Cutler*. Rather, she attributed her emotional condition, in part, to a series of disciplinary actions taken by her supervisor. Disciplinary actions including oral reprimands, discussions or letters of warning for conduct are noncompensable administrative actions unless the employee shows management acted unreasonably.¹⁰ To support such a claim, a claimant must establish a factual basis by providing probative and reliable evidence.¹¹ OWCP accepted the February 13, 2010 five-day suspension as a compensable employment factor as the arbitration panel found procedural errors by Mr. Felix established administrative error or abuse. Therefore, appellant has established the February 13, 2010 suspension as a compensable employment factor.

Appellant also attributed her claimed anxiety condition to a stress reaction by Supervisor Felix moving her from the east dock to another dock on January 17, 2010, an administrative error violating safety protocols. The Board notes that the assignment of work is generally an administrative function and is not compensable absent error or abuse.¹² In this case, the February 16, 2010 final arbitration decision found that Mr. Felix violated safety procedures on January 17, 2010 by moving appellant from the east dock. The arbitrator's finding is sufficient to establish administrative error. The Board finds that appellant has submitted sufficient probative evidence to establish a compensable employment factor in this regard.

As appellant established two compensable factors of employment, the Board will review the medical evidence to determine if she established causal relationship. In support of her claim, appellant submitted reports from Dr. Fallenbaum, an attending licensed clinical psychologist, who opined on July 15, 2010 that appellant's perception of disciplinary actions as illogical caused recrudescence of previously resolved dysthymia. On an April 5, 2012 report Dr. Fallenbaum stated that the February 13, 2010 notice of suspension "trigger[ed] some psychological symptoms" without a specific diagnosis. However, she did not explain how or why the two accepted employment factors, the February 13, 2010 disciplinary action and being moved from the east dock on January 17, 2010, would cause or aggravate a specific emotional condition. The Board finds that Dr. Fallenbaum's opinion is insufficient to meet appellant's burden of proof in establishing causal relationship in this case.¹³

Appellant alleged that the claimed condition resulted from a number of employment incidents which OWCP found to be noncompensable. Therefore, the Board must review whether these alleged incidents and conditions are covered employment factors under the terms of FECA.

⁹ *Marlon Vera*, 54 ECAB 834 (2003).

¹⁰ *Ruth S. Johnson*, 46 ECAB 237 (1994).

¹¹ *See Barbara J. Nicholson*, 45 ECAB 843 (1994).

¹² *Donney T. Drennon-Gala*, 56 ECAB 469 (2005); *Linda J. Edward-Delgado*, 55 ECAB 401 (2004).

¹³ *Deborah L. Beatty*, 54 ECAB 340 (2003).

Regarding the employing establishment's unilateral reduction of an October 28, 2009 letter of warning to an official discussion, and unilateral rescission of the June 16, 2010 notice of removal, the Board has held that a subsequent reduction or rescission of a disciplinary action by itself does not establish error or abuse.¹⁴ Appellant has not submitted sufficient evidence to show that the October 28, 2009 letter of warning was issued in error. Therefore, she has not established a compensable employment factor in this regard. Also, appellant did not submit evidence corroborating her allegations of employing establishment administrative error or abuse in issuance of the February 25, 2008 letter of warning, April 27, 2010 14-day suspension, May 18, 2010 14-day suspension and June 29, 2010 notice of removal. Similarly, she did not contest, and Mr. Felix's supervisory statements establish that she was banned from the transportation office on March 27, 2010 because she was present on her day off without permission. Therefore, these disciplinary matters are not compensable work factors.¹⁵

Appellant also attributed her emotional condition to being denied use of a postal vehicle and a lack of standard operating procedures in addition to her written job description. However, the Board has held that self-generated frustration arising from not being allowed to work in a particular position or to hold a particular job is not compensable under FECA.¹⁶ Mr. Felix noted that there were no standard operating procedures and that expeditors were not authorized to use postal vehicles in performing their duties. Although an August 31, 2010 letter from a retired postal supervisor stated generally that expeditors were allowed to use postal vehicles, he did not provide any specific information to establish that appellant was wrongfully denied the use of a vehicle. Appellant has not established a compensable employment factor regarding the lack of standard operating procedures or denial of authorization to use a postal vehicle.

Appellant also alleged that supervisors violated overtime assignment policies from January 16 to February 12, 2010, that supervisors issued conflicting or confusing instructions from April 25, 2008 to December 11, 2009, and that a supervisor wrongfully used her scanner on May 22, 2010 allegedly to fabricate disciplinary charges. However, an employee's dissatisfaction with the way a supervisor performs duties or exercises discretion in assigning work is not compensable absent error or abuse.¹⁷ Appellant did not submit corroborating evidence establishing conflicting supervisory instructions, that the overtime assignments were erroneous, or that a supervisor using her scanner on May 22, 2010 was erroneous or abusive. She failed to establish compensable employment factors in this regard.

Appellant also contended that Mr. Felix's negative remarks to coworkers on January 18 and April 26, 2010, and being informed of these remarks by a coworker on April 26, 2010 contributed to her anxiety. Mr. Felix acknowledged that, on January 18, 2010, he told one of appellant's coworkers that she was developing a bad attitude similar to appellant. The Board has held that every statement made in the workplace is not a compensable factor of employment. A mere utterance which may engender offensive feelings in an employee does not sufficiently

¹⁴ *Paul L. Stewart*, 54 ECAB 824 (2003); *Mary L. Brooks*, 46 ECAB 266, 274 (1994).

¹⁵ *Janice I. Moore*, 53 ECAB 777 (2002).

¹⁶ *Lori A. Facey*, 55 ECAB 217 (2004); see *Katherine A. Berg*, 54 ECAB 262 (2002).

¹⁷ *Supra* note 12.

affect the conditions of his or her employment to constitute a compensable factor.¹⁸ Under the circumstances of this case the Board finds that Mr. Felix's remarks are not compensable.¹⁹

Appellant also attributed her condition to Mr. Felix momentarily blocking his office doorway with his arm on May 18, 2010 when she attempted to leave his office without signing a disciplinary letter or stating that she refused to sign. Mr. Felix confirmed that he momentarily blocked the doorway with his arm but from both appellant's and his description of the event, the Board finds that his momentary gesture does not rise to the level of a compensable work factor. Therefore, it is not a compensable factor of employment.²⁰

Appellant also alleged a pattern of harassment and reprisals for her union activities and for filing grievances. For harassment or discrimination to give rise to a compensable disability under FECA, there must be probative and reliable evidence that harassment or discrimination did in fact occur.²¹ Mere perceptions of harassment, retaliation or discrimination are not compensable under FECA.²² Appellant did not submit probative evidence, such as witness statements, corroborating her allegations of retaliation and harassment based on union or grievance activities. The absence of such documentation diminishes the validity of her contentions in this case where there is no evidence to document that she was discriminated or retaliated against. As appellant has not established these incidents as factual, she has not established a compensable work factor under FECA with respect to the claimed harassment and reprisals.

The Board notes that several of appellant's allegations involve interactions with Mr. Mitchell. In March 28 and April 30, 2010 statements, Mr. Mitchell explained that he previously dated appellant but broke off the relationship in 2001, greatly upsetting her and leading to the December 2001 incident in which she threw hot coffee in his face. Generally, the Board has held that personal disputes between coworkers are not compensable if they arise outside the scope of employment and are then imported into the workplace.²³ In this case, the record establishes that appellant had a prior relationship with her coworker, imported to the workplace. Therefore, their interactions are not considered compensable factors of employment.

On appeal, appellant asserts that OWCP ignored evidence in her favor and wrongfully her allegations of employer wrongdoing. As noted, appellant established two compensable factors of employment due to employer error. The Board notes that OWCP carefully considered her multiple statements and related documentation in its decisions.

¹⁸ *Denis M. Dupor*, 51 ECAB 482 (2000).

¹⁹ *Cyndia R. Harrill*, 55 ECAB 522 (2004).

²⁰ *Id.*

²¹ *Marlon Vera*, *supra* note 9.

²² *Kim Nguyen*, 53 ECAB 127 (2001).

²³ *James P. Schilling*, 54 ECAB 641 (2003).

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 has not established that she sustained an emotional condition in the performance of duty as alleged. The July 27, 2012 decision is modified to find that being moved from the east dock on January 17, 2010 constituted a compensable factor of employment.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 27, 2012 is affirmed as modified.

Issued: April 5, 2013
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