

FACTUAL HISTORY

On April 11, 2011 appellant, then a 54-year-old clerk, filed an occupational disease claim alleging that she was harassed and treated unfairly by Steven Gerstl, a postmaster. She experienced stress, depression and anxiety and was reminded of treatment by a previous postmaster who harassed her for two years. Appellant stopped work on April 1, 2011 and did not return. In a statement dated April 11, 2011, she contended that her start time was first inappropriately changed in March 2010 and was recently changed. Appellant's desk was inappropriately moved when it had been in the same place for 20 years. She noted that she had temporarily resigned as union president, and explained that she had been harassed by a previous postmaster, Tom Crawley, and believed it was going to happen again.

The employing establishment controverted the claim. Dominique Thomas, health and resource management specialist, explained that on April 1, 2011 appellant's start time was changed from 6:00 a.m. to 7:00 a.m., effective April 4, 2011. After she initially refused, appellant accepted the change but did not report for duty on April 4, 2011 and had not returned to work. Ms. Thomas stated that, due to operational changes in mail arrival times and reduced volume, carrier start times, were adjusted. As specific to appellant, contractual provisions were followed and she was given a timely notice of the change.

In an April 13, 2011 statement, Mr. Gerstl noted that he had been postmaster since November 15, 2003. During that time, he had no reason to believe appellant had been the subject of any harassment. During the prior several months, the employing establishment had been undergoing numerous changes to workload and work schedules, noting that the automation operation was removed and transferred which required a complete review and change in reporting times for the majority of employees. Mr. Gerstl met with appellant, who was president of the local American Postal Workers Union (APWU) and discussed possible changes in reporting times. He proposed reposting all positions as numerous job bids, and that appellant and Janet Monson, a shop steward, asked to review the proposal. Mr. Gerstl noted that the only changes they proposed were changes to their start times. After a discussion with appellant, her start time was changed to 6:00 a.m. In March 2011, sorting machinery was removed. Mr. Gerstl and management staff discussed what should be done with the empty space. It was decided to move three carrier zones and a mail processing unit to enhance operations. These changes included moving the desk occupied by appellant from one side to another. Mr. Gerstl informed appellant that her desk would be moved on March 19, 2011, and the rearrangement/move was completed. Additional changes in start times were made in late March 2011, including that appellant's report time was changed from 6:00 a.m. to 7:00 a.m. On March 31, 2011 Mr. Gerstl offered appellant a voluntary change to 7:00 a.m. to avoid reposting her position. Appellant initially refused to sign the letter, but returned the form on April 1, 2011 and accepted the change. She called in sick on April 4 to 5, 2011 and on April 6, 2011 submitted a doctor's slip stating that she was to be off work until April 20, 2011. On April 7, 2011 Mr. Gerstl wrote to appellant notifying her that she must provide medical documentation for her absence as outlined in postal policies. He described the changes in start times for other employees and stated that at no time was she harassed or treated differently from other postal employees. Mr. Gerstl attached a copy of the March 31, 2011 letter notifying appellant of the schedule change that she accepted on April 1, 2011.

By report dated April 23, 2011, Pamela J. Swanson, M.Ed., a licensed professional counselor, advised that she saw appellant on April 14 and 22, 2011. She listed appellant's report of work incidents and diagnosed adjustment disorder with mixed anxiety and depressed mood. Ms. Swanson noted that appellant reported that the events that had happened over the last couple of months were responsible for her condition.

On July 11, 2011 OWCP informed appellant of the evidence needed to support her claim. In a statement dated August 21, 2011, appellant alleged that, beginning in December 2010, Mr. Gerstl consulted with Janet Monson, a union steward, rather than appellant regarding work matters. Appellant became afraid that they were conspiring against her. She repeated that her desk had been moved inappropriately and she was not allotted time to set it up after the move. Mr. Gerstl mandated that appellant work on Saturday and changed her start time. After appellant stopped work, he moved the union file cabinet and had Debbie Tinnell, supervisor customer service, empty it into lockers, that she felt was punitive toward her. Appellant filed grievances against the former postmaster, Mr. Crawley, who allegedly harassed her for two years, and described incidents that happened when he was postmaster. She attached worksheets of grievances dated April 1 and 22, 2011 in which she claimed that she was denied union representation and that there was an improper bid change.

In a June 14, 2011 report, Dr. Francis J. Woo, Jr., a family physician, advised that appellant had been under his care since April 15, 2011. Appellant complained of harassment and of turmoil at her place of employment. Dr. Woo listed the diagnoses as provided by Ms. Swanson. In treatment notes dated April 15 to July 11, 2011, he reiterated appellant's complaints, described her condition, treatment and medication regimen. Dr. Woo diagnosed post-traumatic stress disorder (PTSD). He noted that appellant was seeing Ms. Swanson weekly. On July 12, 2011 Ms. Swanson noted appellant's report of difficulties at the post office. She advised that appellant's severe anxiety reaction to the most recent harassment was partly PTSD from her previous experience with a former postmaster, and the events of the last several months were responsible for her condition.

By decision dated October 12, 2011, OWCP denied appellant's claim, finding that she did not establish any compensable factor of employment. It accepted that in March 2011 Mr. Gerstl, the postmaster, advised appellant that her desk would be moved; in March 2011 there were changes made to the reporting times of the clerks, including appellant; appellant called in sick from April 4 to 6, 2011 and the postmaster drafted a letter informing her of the proper medical documentation that she should provide to support her absence; and in June 2011, management did not approve her request that she be paid leave for only 26 hours per week. However, OWCP found these incidents were not compensable factors because appellant did not submit evidence of error or abuse in these administrative functions. It found appellant's allegation that Mr. Gerstl and Ms. Monson had conspired against her was not established as factual.

Appellant timely requested a hearing and submitted evidence regarding alleged harassment that occurred under Mr. Crawley and Mr. Gerstl. Appellant submitted information regarding positions being abolished at the employing establishment, letters of warning dated October 14, 2000, November 9, 2001 and May 30, 2003, 7-day suspensions dated November 7 and December 12, 2001, 2001, a 14-day suspension dated December 18, 2001, and grievances

dated 1989, 1999, 2001 and 2003. She submitted correspondence regarding a May 15, 2002 letter of complaint to Charles Davis, district manager, and a June 10, 2002 letter from Richard M. Lord, manager of post office operations. Appellant also submitted unidentified information from a September 2000 publication and postal policies.

At the March 7, 2012 hearing, the hearing representative informed appellant that the claim would be adjudicated based on her original allegations and would not include new factors alleged after the October 12, 2011 decision. The hearing representative requested that appellant submit evidence to establish administrative error and abuse. Appellant testified that Mr. Gerstl, the postmaster, abused his authority and harassed her after he befriended Ms. Monson. She was given 30 days to provide additional evidence.²

In letters dated March 20, 2012, the employing establishment reiterated that appellant did not sustain an emotional condition in the performance of duty. In a March 22, 2012 letter, appellant attributed her condition to the treatment by former postmaster, Mr. Crawley, and current postmaster, Mr. Gerstl. She contended that Mr. Gerstl did not respect her seniority.

By decision dated May 11, 2012, OWCP's hearing representative found that appellant submitted insufficient evidence to establish her allegations as factual. She affirmed the October 12, 2011 decision, finding that appellant did not establish an emotional condition in the performance of duty.

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.³ If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor.⁴ 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.⁵

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*,⁶ the Board explained that there are distinctions as to the type of employment situations giving rise to a

² A representative from the employer listened in at the hearing, which was held telephonically.

³ *Leslie C. Moore*, 52 ECAB 132 (2000).

⁴ *Dennis J. Balogh*, 52 ECAB 232 (2001).

⁵ *Id.*

⁶ 28 ECAB 125 (1976).

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.⁷ 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.⁸ Allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.⁹ Where the claimant alleges compensable factors of employment, he or she must substantiate such allegations with probative and reliable evidence.¹⁰ Personal perceptions alone are insufficient to establish an employment-related emotional condition.¹¹

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer 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

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.¹⁴ With regard to emotional claims arising under FECA, the term "harassment" as applied by the Board is not the equivalent of "harassment" as defined or implemented by other agencies, such as the Equal Employment Opportunity 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

⁷ See *Robert W. Johns*, 51 ECAB 137 (1999).

⁸ *Lillian Cutler*, *supra* note 6.

⁹ *J.F.*, 59 ECAB 331 (2008).

¹⁰ *M.D.*, 59 ECAB 211 (2007).

¹¹ *Roger Williams*, 52 ECAB 468 (2001).

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 556 (1991).

¹⁴ *James E. Norris*, 52 ECAB 93 (2000).

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.¹⁵

ANALYSIS

The Board finds that appellant did not meet her burden of proof to establish that she sustained a stress-related condition in the performance of duty causally related to factors of her federal employment.

Appellant has not attributed her emotional condition to the performance of her regular work duties or to any special work requirement arising from her employment duties as a clerk under *Cutler*.¹⁶ Rather, her claim pertains to administrative actions that occurred beginning in 2012 and allegations that she was harassed and treated in an abusive manner by Mr. Gerstl, the postmaster.

Generally, actions of the employing establishment 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 Appellant alleged that her schedule was improperly changed, her desk was improperly moved, Mr. Gerstl required supportive medical documentation for her absences, and her request to use 26 hours of sick leave rather than 40 for each week of her absence were erroneously denied. The Board finds that the evidence of record does not establish error or abuse in these matters. Mr. Gerstl explained that almost all employees' schedules were changed due to the needs of the employing establishment, especially when a large portion of the facility's sorting duties were transferred. The workroom floor was reconfigured after the sorting machinery was moved, which necessitated moving appellant's desk.

Appellant generally asserted that Mr. Gerstl spoke to her in a disrespectful manner. She did not submit evidence to support her claim of verbal abuse, and thus did not establish a factual basis for her allegation.¹⁹

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

¹⁵ *Beverly R. Jones*, 55 ECAB 411 (2004).

¹⁶ See *James E. Norris*, *supra* note 14.

¹⁷ *J.C.*, 58 ECAB 594 (2007).

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

¹⁹ See *T.G.*, 58 ECAB 189 (2006).

compensable, absent evidence of error or abuse.²⁰ As noted above, Mr. Gerstl fully explained his administrative actions, including the schedule changes, moving appellant's desk and notifying her to provide acceptable medical documentation. The record contains no evidence that Mr. Gerstl or any employing establishment supervisor or manager committed error or abuse in discharging management duties.²¹

Regarding appellant's contention that she was harassed by Mr. Gerstl, mere perceptions of harassment or discrimination are not compensable under FECA,²² 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 his or her allegations with probative and reliable evidence.²³ In the case at hand, appellant submitted nothing to support specific actions by Mr. Gerstl to show a persistent disturbance, torment or persecution, *i.e.*, mistreatment by employing establishment management.²⁴ Moreover, there is no evidence of record to support that she was previously harassed by Mr. Crawley. Appellant therefore did not establish a factual basis for her claim of harassment by probative and reliable evidence.²⁵

The Board concludes that appellant did not meet her burden of proof to establish that she sustained a stress-related condition in the performance of duty causally related to factors of her federal employment.²⁶ Appellant's emotional reaction must be considered self-generated, in that it resulted from her perceptions about employing establishment management actions.²⁷

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 establish that she sustained an emotional condition in the performance of duty.

²⁰ *Id.*

²¹ *See David C. Lindsey, Jr.*, 56 ECAB 263 (2005).

²² *James E. Norris*, *supra* note 14.

²³ *Id.*

²⁴ *Beverly R. Jones*, *supra* note 15.

²⁵ *See Robert Breeden*, 57 ECAB 622 (2006).

²⁶ *Leslie Moore*, *supra* note 3.

²⁷ *See V.W.*, 58 ECAB 428 (2007). As appellant failed to establish a compensable employment factor, the Board need not address the medical evidence of record; *see Katherine A. Berg*, 54 ECAB 262 (2002).

ORDER

IT IS HEREBY ORDERED THAT the May 11, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 8, 2013
Washington, DC

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

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

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