

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

S.S., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Tampa, FL, Employer**

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**Docket No. 13-746
Issued: December 11, 2013**

Appearances:

*Lenin V. Perez, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 11, 2013 appellant, through her attorney, filed a timely appeal from the January 25, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 an emotional condition in the performance of duty.

¹ 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On September 28, 2010 appellant, then a 54-year-old mail processing clerk, filed an occupational disease claim alleging that she sustained post-traumatic stress disorder and major depressive disorder due to her work. Regarding the cause of the claimed injury, she stated:

“Upon the completion of a thorough diagnostic evaluation, my physician diagnosed me with post-traumatic stress disorder (PTSD) and major depressive disorder, recurrent, severe. MDO Debbie Bleu-Hampton was in charge of the work area and she mishandled the immediate situation causing undo harm and stress. Employee has yet to receive files requested to show management mishandling of case.”

Appellant indicated that she first became aware of her condition on November 1, 2009 submitted a position description in support of her claim.

In a November 17, 2010 decision, OWCP denied appellant’s emotional condition claim on the grounds that she had not established any compensable work factors.

In a November 11, 2010 statement, appellant alleged that her supervisors, particularly Ms. Bleu-Hampton, mishandled an incident that occurred at work on November 1, 2009 when she was exposed to a powdery substance leaking from a package.² She asserted that Ms. Bleu-Hampton took the package and handed it to another employee without having specific information about what was inside and later announced that the package contained tannic acid or some other substance believed to be harmless. Appellant generally alleged that Ms. Bleu-Hampton subjected appellant to harassment and discrimination, claiming that she unfairly disciplined her especially with regard to her taking of breaks and unreasonably scrutinized her work and location on the workroom floor. She believed that Ms. Bleu-Hampton’s actions were retaliation for her filing of grievances. Appellant asserted that Ms. Bleu-Hampton, other supervisors and coworkers subjected her to verbal abuse.

The employing establishment submitted letters in which it asserted that appellant was not subjected to harassment or discrimination and that no wrongdoing occurred in administrative matters, including the November 1, 2009 incident. Documents indicate that an investigation was carried out regarding the events of November 1, 2009 but there was no finding of management wrongdoing.

Appellant submitted medical evidence in support of her claim. In June 1, September 23 and November 30, 2010 reports, Dr. Patti Barrows, an attending clinical psychologist, attributed appellant’s post-traumatic stress disorder and depression to a coercive work environment and coworker harassment. In a June 23, 2010 report, she provided a diagnosis of post-traumatic stress disorder and major depressive disorder, recurrent and stated that appellant’s “symptoms were impacted by the events at the ‘Eagle’ in November 2009 as well as the harassing and coercive environment created by coworkers.”

² The worksite where the incident occurred was known as the “Eagle.”

In a July 15, 2011 decision, OWCP modified its November 17, 2010 decision to reflect that it had accepted one work factor but that appellant had not submitted sufficient medical evidence to show that she sustained an injury due to the accepted work factor. In accepting the work factor, it accepted that on November 1, 2009 she “was exposed to an unknown powdery substance that came out of a package.” OWCP indicated that appellant had not established any other work factors and found that the submitted reports of Dr. Barrows did not establish a medical condition due to the accepted factor.

Appellant requested reconsideration and submitted additional statements describing her claimed work factors. She continued to argue that management mishandled the November 1, 2009 incident. Appellant also submitted additional medical evidence, including a July 26, 2011 report in which Dr. Barrows attributed her condition to coworker harassment. In a March 13, 2012 report, Dr. Gary Arthur, an attending Board-certified psychiatrist, attributed appellant’s post-traumatic stress disorder and depression to “the leaking package incident November 1, 2009” but he did not provide any explanation for this opinion.

In a June 18, 2012 decision, OWCP affirmed its December 30, 2011 decision denying appellant’s emotional condition claim. Appellant again requested reconsideration and submitted additional statements discussing claimed work factors.

In a January 25, 2013 decision, OWCP affirmed its June 18, 2012 decision denying appellant’s emotional condition claim noting that she had submitted insufficient medical evidence to establish an injury due to the accepted work factor.

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 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.³ 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.⁴

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.⁵ However, the Board has held that, where the evidence establishes error or abuse on the part of the employing

³ *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ *Gregorio E. Conde*, 52 ECAB 410 (2001).

⁵ *Matilda R. Wyatt*, 52 ECAB 421 (2001); *reaff’d on recon.*, 42 ECAB 556 (1991); *Thomas D. McEuen*, 41 ECAB 387 (1990).

establishment in what would otherwise be an administrative matter, coverage will be afforded.⁶ In determining whether the employing establishment has erred or acted abusively, the Board will examine the factual evidence of record to determine whether the employing establishment acted reasonably.⁷

To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors.⁸ However, for harassment or discrimination to give rise to a compensable disability under FECA, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under FECA.⁹

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which she claims compensation was caused or adversely affected by employment factors.¹⁰ This burden includes the submission of a detailed description of the employment factors or conditions, which she 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.¹¹

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or 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 and which working conditions are not deemed factors of employment and may not be considered.¹² 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.¹³

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the

⁶ *William H. Fortner*, 49 ECAB 324 (1998).

⁷ *Ruth S. Johnson*, 46 ECAB 237 (1994).

⁸ *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

⁹ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

¹⁰ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

¹¹ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

¹² *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

¹³ *Id.*

compensable employment factors. The opinion of the physician must be based on a complete and accurate factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹⁴

ANALYSIS

Appellant alleged that she sustained an emotional condition as a result of a number of employment incidents and conditions. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of FECA. In this case, OWCP has accepted a work factor with respect to the incident on November 1, 2009 when appellant was exposed to a powdery substance leaking from a package. The Board finds that this acceptance was proper as her work duties put her in direct contact with the package. The Board notes that appellant's other allegations do not pertain to her regular or specially assigned duties under *Cutler*.¹⁵ Rather, appellant has alleged error and abuse in administrative matters and harassment and discrimination on the part of her supervisors and coworkers.

Appellant alleged that her employer committed wrongdoing by mishandling the situation when she was exposed to the powdery substance on November 1, 2009. She also claimed that her supervisor, Ms. Bleu-Hampton, subjected her to improper administrative actions, including unwarranted disciplinary actions. Such 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. However, the Board has held that, where the evidence establishes error or abuse on the part of the employing establishment in what would otherwise be an administrative matter, coverage will be afforded. With respect to the events of November 1, 2009, appellant has not submitted evidence that management committed error or abuse. The Board notes that documents of record indicate that no evidence of management error was found. Appellant did not submit evidence that management committed error or abuse with respect to her other claims of administrative wrongdoing. For these reasons, she has not established any work factors with respect to administrative matters.

Appellant also generally alleged that Ms. Bleu-Hampton subjected her to harassment and discrimination, claiming that she unreasonably scrutinized her work and location on the workroom floor and subjected her to verbal abuse. She also claimed that other supervisors and coworkers subjected her to verbal abuse. The employing establishment denied that appellant was subjected to harassment or discrimination.¹⁶ Appellant alleged that supervisors and coworkers made statements and engaged in actions which she believed constituted harassment and

¹⁴ *Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

¹⁵ *See Cutler supra* note 3.

¹⁶ *See Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

discrimination, but she provided no corroborating evidence, such as witness statements, to establish that the statements actually were made or that the actions actually occurred.¹⁷ Thus, she has not established a compensable employment factor under FECA with respect to the claimed harassment and discrimination.

In this case, appellant established one work factor, the incident on November 1, 2009 when she was exposed to a powdery substance leaking from a package. As noted, she did not establish that management mismanaged its handling of this matter. However, appellant's burden of proof is not discharged by the fact that she has established an employment factor which may give rise to a compensable disability under FECA. To establish her occupational disease claim for an emotional condition, she must also submit rationalized medical evidence establishing that she has an emotional or psychiatric disorder and that such disorder is causally related to the accepted compensable employment factor.¹⁸

The Board finds that appellant did not submit sufficient rationalized medical evidence showing that she sustained a diagnosed condition causally related to the accepted work factor. Appellant submitted a number of medical reports containing diagnoses such as post-traumatic stress disorder and depression, including reports of Dr. Barrows, an attending clinical psychologist. Dr. Barrows variously attributed appellant's emotional condition to such factors as the "coercive work environment," harassment from supervisors and coworkers or the exposure to the powdery substance on November 1, 2009. As noted, appellant has not established her claims of harassment or discrimination and therefore a work-related condition would not be established with respect to these matters. Although Dr. Barrows implicated the November 1, 2009 incident in several reports she did not submit a rationalized medical opinion explaining how it caused or aggravated the diagnosed emotional conditions. In a March 13, 2012 report, Dr. Arthur, an attending Board-certified psychiatrist, attributed appellant's post-traumatic stress disorder and depression to "the leaking package incident November 1, 2009" but he did not provide any explanation for this opinion. Appellant did not submit rationalized medical from any physician which showed that she sustained a medical condition due to the accepted work factor. Therefore, she did not show that she sustained a work-related emotional condition and OWCP properly denied her claim.

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 an emotional condition in the performance of duty.

¹⁷ See *William P. George*, 43 ECAB 1159 (1992).

¹⁸ See *Id.*

ORDER

IT IS HEREBY ORDERED THAT the January 25, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 11, 2013
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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