United States Department of Labor
Employees' Compensation Appeals Board

C.C., Appellant	)	
	)	**Docket No. 12-1248**
and	)	**Issued: January 18, 2013**
	)	
U.S. POSTAL SERVICE, POST OFFICE, Philadelphia, PA, Employer	)	

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On May 18, 2012 appellant, through her attorney, filed a timely appeal from the January 30, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (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 June 13, 2011 appellant, then a 32-year-old letter carrier, filed a claim alleging that she developed an emotional condition after a coworker made threatening comments on the workroom floor on June 3, 2011.

[1] 5 U.S.C. §§ 8101-8193.

In a June 20, 2011 letter, OWCP requested that appellant submit additional factual and medical evidence in support of her claim.

Appellant submitted a June 3, 2011 statement in which she indicated that on June 3, 2011 she overheard two coworkers, Steve Murphy and Larry Trimmer, discussing a Memorial Day race. Mr. Trimmer stated that he was not in the race this year or the prior year and indicated that, the next time he would be seen in the paper, it was going to be big. He indicated that "I [wi]ll take up the whole front page" with headlines that read "unidentifiable coworker blown to shreds." Mr. Murphy responded that they would need dental records. The two coworkers then joked and laughed about these comments. Appellant stated that she was shocked that anyone would actually say what Mr. Trimmer stated out loud. She advised that she called her union steward to see if it was acceptable behavior to say these types of things in public and indicated that she was uncomfortable working near a coworker with such thoughts. Appellant indicated that her supervisor told her that it was a private conversation between two employees that it had nothing to do with her. She stated that she informed her supervisor that this conversation had made her uncomfortable because Mr. Trimmer admitted having an altercation with another coworker when he indicated that he had some mental disorder due to his war experience. Appellant stated that she worried all weekend about the environment she would return to after taking a few days off. She stated that, when she left work on June 3, 2011, her supervisor did not make eye contact or tell her goodbye. Appellant alleged that she worked in a "toxic" work environment and stated that she was physically sick and could not handle being in a room with someone who apparently wanted to blow a coworker to shreds. She also claimed that management mishandled her leave requests and wrongly denied her request for a transfer to another work unit. Appellant submitted several medical reports in support of her claim.

The postmaster of the employing establishment, Rick Delp, challenged appellant's claim that she sustained a compensable injury. Mr. Delp provided a statement noting that the postal inspectors found that the June 3, 2011 conversation occurred and was inappropriate, but that it was not a threat to anyone on the workroom floor. The statement indicated that appellant did not report that she felt threatened but left after completing her office assignments and then went out on the street and contacted her union steward. Mr. Delp indicated that the supervisor on the workroom floor called the two carriers in question back into the facility and called appellant to question her about what had occurred. He indicated that the supervisor stated that appellant reported that these two coworkers were having a conversation about blowing up people. Mr. Delp noted that the other coworkers did not overhear this conversation and that the postal inspectors determined that these comments were not a threat to anyone. He indicated that he brought the two employees into his office and informed them that their conversation was inappropriate and would not be tolerated. Mr. Delp advised that both employees were given discussions on proper conduct and inappropriate behavior.

In a June 26, 2011 decision, OWCP denied appellant's emotional condition claim on the grounds that she did not establish any compensable work factors. It found that she had not established that a threat was made against her on June 3, 2011 or that she was otherwise subjected to harassment.

Appellant requested a video hearing with an OWCP hearing representative. During the hearing held on November 17, 2011, she was represented by counsel. Appellant testified that she

was doing her normal work on June 3, 2011 when two coworkers working behind her started talking about the Memorial Day race that had occurred the prior week. She stated that Mr. Trimmer stated that the next time he would be in the newspaper it would be big and the headlines would read "unidentifiable coworker blown to shreds." Appellant indicated that the other employee responded by stating that they would need dental records. She stated that this shook her up a little bit but she continued to work. Appellant advised that the minute she had the opportunity she called her union steward and told him what had happened. She asserted that she felt that something should be done about the things being talked about on the workroom floor. Appellant indicated that she was not comfortable with such comments. She indicated that the week before Mr. Trimmer got into a confrontation with another employee and stated that he could not be around noises and loudness because he had post-traumatic stress disorder. Appellant noted that Mr. Trimmer was a war veteran. She again asserted that management did not properly address the events of June 3, 2011 or take proper corrective actions. Appellant discussed the medical treatment she received after June 3, 2011 and when questioned by the hearing representative as to what she was experiencing and why she was anxious, she stated that there was no settlement, no grievance and no admission as to what happened on June 3, 2011. She also responded to questioning from counsel as to whether she was afraid that something bad might happen to her and indicated that she feared the unknown and felt that something might happen to another coworker. Appellant stated that she did not know to whom the June 3, 2011 comments were directed but she felt that Mr. Trimmer was talking about someone in the building. She stated that his tone was aggressive and noted that, although the two coworkers both laughed, it did not sound funny. Counsel argued that the evidence was clear that the incident happened and that the coworkers were disciplined. Therefore, the June 3, 2011 comments were a threat and constituted a compensable work factor.

After hearing, OWCP received a statement from the union steward who was called by appellant. The union steward noted that on June 3, 2011 appellant was upset about a conversation she had heard between two carriers. He advised that she stated that she did not know who they were talking about but that she heard a statement about blowing up a fellow coworker. The union steward noted that in the previous week Mr. Trimmer had a confrontation with another coworker and in a threatening manner told the other coworker to shut up. He discussed his actions in reporting the June 3, 2011 incident and indicated that postal inspectors later stated that this was not a threat. The union steward opined that the agency was wrong by not fully investigating appellant's complaint and by trying to make her look like she was a bad person. He indicated that both carriers signed off on their actions being inappropriate.

A statement from another coworker indicated that, on May 28, 2011, the coworker had a loud conversation with his supervisor. Mr. Trimmer asked him to lower his voice because he had post-traumatic stress disorder and did not know what he would do if the yelling continued. Appellant provided another statement noting that when she heard Mr. Trimmer talk about blowing a coworker to shreds on June 3, 2011 she immediately thought of this incident which she had heard about a day or two prior. She stated that the supervisor did not report any incident of this coworker having a mental disorder and did not take her seriously.

Appellant submitted an August 1, 2011 report of Dr. Samuel A. Bobrow, an attending clinical psychologist, which noted that she reported that she overheard a coworker talking to another coworker about "blowing to shreds" some other coworker. Dr. Bobrow indicated that

she later found out that the coworker admitted to making the comment but claimed that he was not serious and little if any punishment was meted out. He noted that appellant indicated that she was fearful of returning to work alongside a coworker who she had overhead making a "terroristic threat." Dr. Bobrow diagnosed "specific phobia, situation type." Appellant also submitted a number of short treatment notes of Dr. Bobrow, including a September 19, 2011 note in which he diagnosed "panic disorder with agoraphobia."

In a January 30, 2012 decision, an OWCP hearing representative affirmed OWCP's January 26, 2011 denial of appellant's emotional condition claim. She found that the June 3, 2011 comments did not constitute a threat or form of harassment and that management did not mishandle appellant's concerns about the comments or otherwise commit error or abuse with respect to administrative matters.

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 her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA.[2] 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 her frustration from not being permitted to work in a particular environment or to hold a particular position.[3]

To the extent that disputes and incidents alleged as constituting harassment by coworkers are established as occurring and arising from a claimant's performance of her regular duties, these could constitute employment factors.[4] However, for harassment to give rise to a compensable disability under FECA, there must be evidence that harassment did in fact occur. Mere perceptions of harassment are not compensable under FECA.[5]

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employing establishment rather than the regular or specially assigned work duties of the employee and are not covered under FECA.[6] 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.[7] In determining whether the employing establishment has erred or acted abusively, the

[2] *Lillian Cutler*, 28 ECAB 125 (1976).

[3] *Gregorio E. Conde*, 52 ECAB 410 (2001).

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

[5] *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

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

[7] *William H. Fortner*, 49 ECAB 324 (1998).

Board will examine the factual evidence of record to determine whether the employing establishment acted reasonably.[8]

A claimant 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.[9] This burden includes the submission of a detailed description of the employment factors or conditions, which 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.[10]

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.[11] 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.[12]

ANALYSIS

Appellant alleged that she sustained an emotional condition as a result of a number of employment incidents and conditions. OWCP denied her emotional condition claim on the grounds that she did not establish any compensable employment factors. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of FECA. The Board notes that appellant's allegations do not pertain to her regular or specially assigned duties under *Cutler*.[13] Rather, appellant has alleged harassment on the part of coworkers and error and abuse in administrative matters.

In the present case, the employing establishment denied that appellant was subjected to harassment and she has not submitted sufficient evidence to establish that she was harassed by coworkers.[14] The Board has recognized the compensability of physical threats or verbal abuse in

[8] *Ruth S. Johnson*, 46 ECAB 237 (1994).

[9] *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

[10] *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

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

[12] *Id.*

[13] *See Cutler* note 2.

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

certain circumstances. This does not imply, however, that every statement uttered in the workplace will give rise to coverage under FECA.[15]

In the present case, appellant alleged that she sustained an emotional condition due to comments she overheard between two coworkers on June 3, 2011 when one coworker indicated that the next time his name appeared in the newspaper it would be with a big headline "unidentifiable coworker blown to shreds." She related that they both laughed and that the other coworker further commented that dental records would be needed. Appellant indicated that these comments disturbed her and suggested that she felt that either she or a coworker was in danger.

The evidence of record shows that on June 3, 2011 two coworkers were talking to each other and appellant overheard one of them state something to the effect that the next time he would be in the newspaper the headlines would read "unidentifiable coworker blown to shreds." While appellant interpreted this as a threat against herself or another unidentified coworker, the Board finds that these comments were vague in nature and were not directed to her. That the comments represented a direct threat was appellant's self-generated perception of the comments. There is no clear evidence to relate the June 3, 2011 conversation to her duties or to find that it constituted a threat. A postal inspector talked with the coworkers on the day of the incident and did not find the comments to constitute a threat. The postmaster conducted an investigation and did not find that a threat had been made. The fact that the comments might have been inappropriate is not sufficient to establish that they were a threat or a form of harassment that would constitute an employment factor.[16] Appellant has not shown how such an isolated comment would rise to the level of verbal abuse or otherwise fall within the coverage of FECA.[17] Thus, she has not established a compensable work factor under FECA with respect to the claimed harassment.

Appellant has not shown that management committed error or abuse with respect to several administrative matters. She discussed her concern with her supervisor's reaction to her reporting the June 3, 2011 comments to the union and her disagreement with the agency's actions in investigating and responding to her concerns about the incident. However, appellant did not submit evidence supporting that the supervisor's actions following the June 3, 2011 comments or the actions of the agency by investigating and issuing a discussion to the two coworkers were in error or abusive. She did not submit any evidence to support her claims of error and abuse, such as the favorable findings of a grievance or complaint. Appellant also did not submit evidence showing that the agency's denial of her request for transfer or its handling of

[15] *See Leroy Thomas, III*, 46 ECAB 946, 954 (1995); *Alton L. White*, 42 ECAB 666, 669-70 (1991).

[16] On appeal, counsel argued that the June 3, 2011 comments rose to the level of a direct threat and constituted harassment because it was appellant's subjective feeling that the comments did in fact constitute a true threat. Counsel did not cite any precedent which supported his position.

[17] *See, e.g., Alfred Arts*, 45 ECAB 530, 543-44 (1994) and cases cited therein. Appellant made note of an incident on May 28, 2011 (a few days prior to the June 3, 2011 incident) when Mr. Trimmer asked a coworker to lower his voice because he could not handle loud noises due to a condition he sustained during military service. However, she did not actually claim that she witnessed this incident, but rather merely indicated that she had heard about it and called it to mind after hearing Mr. Trimmer make the comments on June 3, 2011.

her leave requests constituted error or abuse.[18] Thus, she has not established a compensable employment factor under FECA with respect to administrative matters.

For the foregoing reasons, appellant has not established any compensable employment factors under FECA and, therefore, has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty.[19]

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

[18] Appellant also made vague allegations of having to work in toxic work environment but she did not provide any further description of this general claim.

[19] As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; *see Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

ORDER

IT IS HEREBY ORDERED THAT the January 30, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 18, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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