



caused mental anguish that has advanced into physical manifestations.” Appellant first became aware of her claimed condition on April 18, 2011 and realized that it was caused or aggravated by her employment on September 12, 2011.

In a September 23, 2011 statement, appellant noted that she had documented that she was exposed to a work environment which had become increasingly hostile. She alleged that she had been “intimidated emotionally” and “derailed mentally” and was physically unable to function. Appellant submitted administrative documents regarding positions that she held with the employing establishment and medical reports concerning the treatment of her claimed condition, including reports of Dr. Michael Smith, an attending osteopath, and Dr. Paul Schefflein, an attending Board-certified psychiatrist.

Appellant submitted numerous documents from an Equal Employment Opportunity (EEO) claim that she filed in April 2011. In this claim, she alleged several instances of wrongdoing by her employing establishment, including the allegations that, on or about February 28, 2011, her supervisor, Olawole Olayinka, removed her duties which were associated with approving time, attendance and leave for the employees in her unit. On or about April 8, 2011, management announced hiring a supervisory information technology specialist (GS-2210-13) rather than laterally transferring appellant into the position. In June 2011 appellant was removed from her office space and placed in a smaller space. On August 10, 2011 her supervisor advised her to stop telecommuting two days a week. On August 26, 2011 appellant learned that she was not selected for the position of supervisory information technology specialist. The documents do not provide any indication that a final decision was rendered on her claim.

In a December 6, 2011 decision, OWCP denied appellant’s claim on the grounds that she did not establish any compensable work factors. It noted that she did not clearly explain how her work environment was hostile.

Appellant, through counsel, requested reconsideration of the denial of her emotional condition claim. In an August 13, 2012 statement, counsel argued that, effective February 2011, appellant was stripped of certain job duties, including time keeping responsibilities and responsibility for certifying time. Appellant was stripped of authority over full-time employees, despite continually being held responsible for their actions. As lead information technology specialist, she was stripped of any and all of her supervisory duties, without adequate reason or justification. Counsel argued that appellant was denied a promotion, without reason or justification, to a GS-13 position as a supervisory information technology specialist. Appellant was prevented from performing any duties that appeared to be supervisory in nature or that would otherwise help advance her career professionally, such as certifying and approving leave time, issuing employee performance appraisals and carrying out purchasing responsibilities. Counsel argued that she was intentionally subjected to a visually obvious demotion by being required to move to a work space that was substantially smaller than the one she previously occupied. He claimed that the employing establishment intentionally breached prior EEO settlement agreements which permitted her to telework from home. The employing

establishment's taking away of telework constituted retaliation against appellant for prior EEO complaints.<sup>2</sup>

In a November 16, 2012 letter, Julie Barnette, a human resources specialist with the employing establishment, denied that the employing establishment had committed harassment, discrimination or wrongdoing with respect to any administrative matters. She stated that appellant's position descriptions did not include supervisory duties, so no supervisory duties were taken away from her. Ms. Barnette noted that appellant was selected to be interviewed with several other candidates for the position of supervisory information technology specialist, but she voluntarily removed herself from consideration for the position. She indicated that appellant's work space was reconfigured to a smaller size along with those of several coworkers as part of a larger reconfiguration plan due to limited space; but asserted that appellant was treated in the same manner as her coworkers. Appellant had been involved in determining the proposed reconfiguration and actually endorsed it. Ms. Barnette noted that appellant had previously participated in a teleworking program, but the business needs of the employing establishment dictated that personnel be onsite.<sup>3</sup>

In a January 21, 2013 statement, counsel responded to the employing establishment's November 16, 2012 letter and contested a number of the statements in the letter. He argued that appellant's position descriptions did in fact contain supervisory duties that were improperly stripped away by Mr. Olayinka. Counsel advised that appellant did not voluntarily remove herself from consideration for a promotion or approve of the reconfiguration of her work space. Appellant, through counsel, submitted copies of e-mails from 1998 in which a supervisor discussed the possibility that appellant's position description had been "miscoded" with respect to supervisory duties after the employing establishment underwent an organizational restructure.

In a February 14, 2013 decision, OWCP affirmed its December 6, 2011 denial of appellant's emotional condition claim, finding that she still had not established any compensable work factors.

### **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

---

<sup>2</sup> Appellant submitted a July 26, 2012 narrative report in which Dr. Jeffrey H. Newton, an attending Board-certified psychiatrist, posited that she sustained depression due to various work factors, including being wrongly denied a promotion.

<sup>3</sup> A 2004 EEO agreement permitted appellant to work at home two days per week. A 2006 EEO agreement permitted her to have five floating telework days a year. The employing establishment provided a diagram of appellant's reconfigured work space. It showed that she and two coworkers had work cubicles of roughly the same size.

by the employment, the disability comes within the coverage of FECA.<sup>4</sup> 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.<sup>5</sup>

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.<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup>

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.<sup>9</sup> 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.<sup>10</sup>

An employee has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he or she claims compensation was caused or adversely affected by employment factors.<sup>11</sup> This burden includes the submission of a detailed description of the employment factors or conditions which he or 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.<sup>12</sup>

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

---

<sup>4</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>5</sup> *Gregorio E. Conde*, 52 ECAB 410 (2001).

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

<sup>7</sup> *William H. Fortner*, 49 ECAB 324 (1998).

<sup>8</sup> *Ruth S. Johnson*, 46 ECAB 237 (1994).

<sup>9</sup> *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

<sup>10</sup> *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

<sup>11</sup> *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

<sup>12</sup> *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

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.<sup>13</sup> 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.<sup>14</sup>

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 reasoned opinion on whether there is a causal relationship between the claimant's diagnosed condition and the 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.<sup>15</sup>

### ANALYSIS

Appellant alleged that she sustained an emotional condition as a result of several 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 initially review whether the alleged incidents and conditions of employment are compensable 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*.<sup>16</sup> Rather, appellant has alleged error and abuse in administrative matters and harassment and discrimination on the part of her supervisors.

Appellant alleged that the employing establishment committed wrongdoing with respect to various administrative or personnel matters. She claimed that, effective February 2011, Mr. Olayinka stripped her of certain job duties including time keeping responsibilities and responsibility for certifying time. As lead information technology specialist, appellant was stripped of any and all of her supervisory duties, without adequate reason or justification. She alleged that in August 2011 she was improperly denied a promotion to a GS-13 position as a supervisory information technology specialist. Appellant was prevented from performing any duties that appeared to be supervisory in nature. She claimed that in June 2011 her work space was improperly reduced in size during a reconfiguration and that in August 2011 two EEO agreements were violated when her ability to participate in a telework program was taken away.

---

<sup>13</sup> See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

<sup>14</sup> *Id.*

<sup>15</sup> *Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

<sup>16</sup> See *Cutler* note 4.

The Board notes that such 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. 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.<sup>17</sup> Appellant has not submitted sufficient evidence to show that management committed error or abuse with respect to these matters. She filed an EEO complaint with respect to several of these matters in April 2012; but the record does not contain any final decision of her complaint or any other grievance which shows that the employing establishment committed error or abuse regarding administrative matters. With respect to appellant's claim of being improperly stripped of supervisory duties, the employing establishment indicated that her position descriptions did not include supervisory duties, so no supervisory duties were actually taken away from her.<sup>18</sup> The employing establishment noted that she was selected to be interviewed with several other candidates for the position of supervisory information technology specialist, but had voluntarily removed herself from consideration for the position. Moreover, appellant was treated the same as coworkers when her work space was reconfigured as part of a plan to conserve office space and she was no longer able to participate in a teleworking program because the business needs of the employing establishment dictated that personnel be onsite. She has not submitted sufficient evidence to establish her allegations as factual. Appellant has not established any work factors with regard to administrative or personnel matters.

Appellant also alleged that supervisors subjected her to harassment and discrimination by carrying out the above-described actions. Harassment and discrimination must be proven by probative evidence and appellant has not submitted such evidence. Appellant did not show error or abuse in administrative matters, let alone that management's actions constituted harassment or discrimination. She claimed that she was being retaliated against for prior EEO filings, but she did not submit sufficient evidence corroborating her claim.<sup>19</sup> Therefore, appellant has not established a work factor with regard to the claimed harassment and discrimination.

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.<sup>20</sup>

---

<sup>17</sup> See *supra* note 8.

<sup>18</sup> The record contains copies of e-mails from 1998 in which a supervisor discussed the possibility that appellant's position description had been "miscoded" with respect to supervisory duties after the employing establishment underwent an organizational restructure. These e-mails are vague in nature and do not clearly show wrongdoing by the employing establishment with regard to this matter.

<sup>19</sup> In particular, appellant did not show that her participation in telework was ended as a form of harassment/discrimination or that her prior EEO agreements were violated.

<sup>20</sup> 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).

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.

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 14, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 17, 2013  
Washington, DC

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

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

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