

submitted prior to its December 3, 2010 denial of appellant's request for reconsideration.² The findings of fact from the prior decision and order are hereby incorporated by reference.³

By decision dated January 17, 2012, OWCP reviewed the evidence on record and found that appellant failed to establish any compensable factors of employment.

By letter dated January 23, 2012 appellant, through her counsel, requested a telephone hearing before the Branch of Hearings and Review.

At the April 18, 2012 hearing, appellant testified that her supervisor, Ms. Taylor, treated her differently from the other employees and would require her to perform tasks that were outside of her job description such as cleaning the dock and picking up trash. She stated that she had job limitations which restricted her from lifting above her shoulders over 10 pounds and no repetitive use of the hands as a result of a previous work-related injury. Appellant claimed that despite her work-restrictions, her supervisor would make her lift mail trays and unload trucks. She testified that Ms. Taylor would require her to do nonwork-related duties for one to three hours a day, but also reported appellant for not fulfilling her regular work duties three times in the last few months. As a result, appellant filed a grievance which she claimed was successful and the disciplinary action was removed from her record. She further noted that the conduct of her supervisor caused her increased stress which gave her migraine headaches, blackouts, depression and high blood pressure. Ms. Taylor often times would not let appellant take lunch break or drink water at her desk while other coworkers were allowed to do so. Appellant also alleged that Ms. Taylor lied and stated that appellant pushed her which was found to be error after a grievance was filed. Ms. Taylor would discipline appellant for missing work when she would use sick days for physician's appointments. The hearing representative informed appellant to provide copies of any grievance documents or judgments and that the record would be held open for 30 days.

In support of her claim, appellant submitted a number of documents including an official job description for a Lead Sales and Services Associate.

In a July 16, 2010 disability certificate, Dr. William R. Frederick, Board-certified in internal medicine, reported that appellant was totally incapacitated from July 16 to 19, 2010.

Requests for notification of absence dated July 21 through 23, 2010 were denied by appellant's supervisor, stating that OWCP had not authorized her claim and that she was absent without leave (AWOL).

By letter dated July 23 and August 5, 2010, Ms. Taylor requested that appellant appear for predisciplinary interviews and to provide documentation in support of her absences from July 22, 2010 to the present.

² Docket No. 11-430 (issued September 21, 2011). OWCP found that appellant did not submit sufficient evidence to establish her allegations as factual.

³ On July 22, 2010 appellant, then a 34-year-old mail clerk, filed a traumatic injury claim alleging harassment by her supervisor, Ethyl Taylor. The employing establishment controverted the claim stating that she was angry because she was going to receive administrative discipline for attendance issues.

Appellant submitted an August 12, 2010 disability certificate from Dr. Frederick stating that she was totally incapacitated from July 22 to August 12, 2010 due to stress from her employer. On August 13, 2010 she submitted a request for continuation of pay for the period July 22 to August 13, 2010, which was signed by Ms. Taylor.

In an August 16, 2010 disability certificate, Dr. Frederick stated that appellant was totally incapacitated from August 16 to 19, 2010. An August 16, 2010 request for notification of absence was approved for sick leave.

In an August 25, 2010 letter to Ms. Taylor, appellant stated that she was confirming her absences of August 23 and 24, 2010 per their conversation. She informed Ms. Taylor that she was going in for emergency surgery and did not know how long she would be out for recovery, estimating three weeks. Appellant stated that Ms. Taylor replied in an unprofessional manner when she informed her of the absences.

In medical reports dated September 1 to 21, 2010, appellant was hospitalized for depression, anxiety and anger management. Her work complaints were noted as well as issues with her supervisor. Dr. Archana G. Leon-Guerrero, a Board-certified psychiatrist, diagnosed major depression. He discharged appellant on September 21, 2010. Dr. Leon-Guerrero stated that, although her psychiatric condition did not preclude her from performing her job, it was extremely likely that her conditions would recur if she was not transferred from her work unit.

In a September 17, 2010 medical note, Dr. Leon-Guerrero reported that appellant had been under his care since September 3, 2010 for major depression and anxiety disorder. He stated that the cause of her condition was a result of a stressful work situation and reported that she had worked for USPS for many years with good attendance at first. At some point appellant began to miss work frequently and built a reputation for poor attendance. As a result, appellant's supervisors did not take her physician's medical recommendations for time off work seriously. This resulted in escalating tensions between appellant and her supervisor, which caused appellant's depression and anxiety. Dr. Leon-Guerrero recommended that appellant be transferred immediately so that she could resume her employment duties as efficiently as possible.

On October 14, 2010 appellant was put on emergency off-duty status by Ms. Taylor when appellant bumped into her without saying excuse me or going around.

In an October 20, 2010 USPS agreement to mediate, appellant was advised that she could return to work on October 21, 2010 and request a transfer from her present work location.

In a November 16, 2010 return to work certificate, Dr. Keyteshia Guy, Board-certified in internal medicine, reported that appellant was excused from November 15 to 19, 2010 due to an illness which could not be disclosed.

Appellant submitted a November 19, 2010 request for notification of absence for sick leave for the period November 15 through 18, 2010. Ms. Taylor denied appellant's request stating that her documentation was not acceptable and that she was AWOL.

By letter dated November 22, 2010, appellant stated that she wanted to file a grievance against Ms. Taylor because she was not paid for 24 hours of leave after her medical documentation was refused for failing to disclose her illness. She stated that her physician was unable to disclose the nature of her illness and asked to speak with Ms. Taylor who refused.

By letter dated November 24, 2010, Ms. Taylor informed appellant that a predisciplinary interview was scheduled for December 2, 2010. Appellant was required to provide documentation to support her absences from November 20, 2010 to the present.

In a November 29, 2010 letter to Timothy Haney, a union vice president, appellant reported that she had been a USPS employee since September 30, 1995. Appellant informed him that she had an accepted workers' compensation claim, which was still open but that management had refused to submit her paperwork so that she could receive continuation of pay and time off for illness.

By letter dated December 16, 2010, Ms. Taylor provided appellant with a second request for a predisciplinary interview, which was scheduled for December 20, 2010.

In a January 6, 2011 letter to Ms. Taylor, appellant stated that she was absent from November 19, 2010 to January 6, 2011 due to a work-related injury, for which she provided the necessary documentation. She stated that continuation of pay was denied by Ms. Taylor and by Rhonda Washington despite the fact that her November 8, 2010 traumatic injury claim had been accepted by OWCP.⁴ Appellant requested that Ms. Taylor process her paperwork properly and place her on continuation of pay due to her injury.

By letter dated March 25, 2011, Linda Ackerman, a Labor Relations Specialist, and Nancy Olumekor, a National Business Agent, reported that the emergency placement notice issued for appellant on October 14, 2010 was rescinded and removed from her records. The record supported that appellant was allowed to work on October 15, 2010 and would receive a payment of \$600.00 to address the other remaining issues in the grievance.

In an October 12, 2011 witness statement, Tyrone R. Nelson, appellant's coworker, testified that on several unspecified occasions he witnessed Ms. Taylor harass appellant even when she was sick. He noted that Ms. Taylor always told lies about craft employees. Mr. Nelson stated that appellant had suffered mentally and physically due to harassment.

By decision dated July 2, 2012, an OWCP hearing representative affirmed the denial of appellant's claim finding that the evidence did not establish a compensable work factor.

LEGAL PRECEDENT

To establish that an emotional condition was sustained in the performance of duty there must be factual evidence identifying and corroborating employment factors or incidents alleged to have caused or contributed to the condition, medical evidence establishing that the employee has an emotional condition and rationalized medical opinion evidence establishing that

⁴ The record before the Board contains no other information regarding other OWCP claims.

compensable employment factors are causally related to the claimed emotional condition.⁵ There must be evidence that implicated acts of harassment or discrimination did, in fact, occur supported by specific, substantive, reliable and probative evidence.⁶

Where the disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within the coverage of FECA.⁷ On the other hand, disability is not covered where it results from an employee's fear of a reduction-in-force, frustration from not being permitted to work in a particular environment or to hold a particular position or to secure a promotion. Disabling conditions resulting from an employee's feeling of job insecurity or the desire for a different job do not constitute a personal injury sustained while in the performance of duty within the meaning of FECA.⁸

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.⁹ 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.¹⁰ 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.¹¹

The Board has held that the manner in which a supervisor exercises his or her discretion falls outside the coverage of FECA. This principal recognizes that a supervisor or manager must be allowed to perform their duties and that employee's will, at times, disagree with actions taken. Mere disagreement with or dislike of actions taken by a supervisor or manager will not be compensable absent evidence establishing error or abuse.¹² Although the handling of leave requests and attendance matters are generally related to employment, they are administrative matters and not a duty of the employee.¹³

⁵ See *Debbie J. Hobbs*, 43 ECAB 135 (1991).

⁶ See *Ruth C. Borden*, 43 ECAB 146 (1991).

⁷ *Lillian Cutler*, 28 ECAB 125 (1976).

⁸ *Id.*

⁹ See *Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

¹⁰ See *William H. Fortner*, 49 ECAB 324 (1998).

¹¹ *Ruth S. Johnson*, 46 ECAB 237 (1994).

¹² *S.M.*, Docket No. 09-2290 (issued July 12, 2010); *Linda J. Edwards-Delgado*, 55 ECAB 401 (2004).

¹³ *C.T.*, Docket No. 08-2160 (issued May 7, 2009); *Jeral R. Gray*, 57 ECAB 611 (2006).

For harassment or discrimination to give rise to a compensable disability, there must be evidence which establishes that the acts alleged or implicated by the employee did, in fact, occur.¹⁴ Mere perceptions of harassment or discrimination are not compensable under FECA.¹⁵ A claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence.¹⁶ Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.¹⁷ A claimant must establish a factual basis for his or her allegations of harassment or discrimination with probative and reliable evidence.¹⁸

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.¹⁹ If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor.²⁰ 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.²¹

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 work factors. The Board must, therefore, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of FECA. The Board finds that appellant did not establish any compensable work factors and thus, did not meet her burden of proof to establish that she sustained an employment-related emotional condition.

Appellant's allegations involving her supervisor pertain to administrative and personnel actions. She did not attribute her condition to her regular or specially assigned duties under

¹⁴ *K.W.*, 59 ECAB 271 (2007); *Robert Breeden*, 57 ECAB 622 (2006).

¹⁵ *M.D.*, 59 ECAB 211 (2007); *Robert G. Burns*, 57 ECAB 657 (2006).

¹⁶ *J.F.*, 59 ECAB 331 (2008); *Robert Breeden*, *supra* note 14.

¹⁷ *G.S.*, Docket No. 09-764 (issued December 18, 2009); *Ronald K. Jablanski*, 56 ECAB 616 (2005); *Penelope C. Owens*, 54 ECAB 684 (2003).

¹⁸ *Beverly R. Jones*, 55 ECAB 411 (2004).

¹⁹ *D.L.*, 58 ECAB 217 (2006); *Jeral R. Gray*, *supra* note 13.

²⁰ *K.W.*, *supra* note 14; *David C. Lindsey, Jr.*, 56 ECAB 263 (2005).

²¹ *Robert Breeden*, *supra* note 14.

Cutler.²² In *Thomas D. McEuen*,²³ the Board held that an employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment are not covered under FECA as such matters pertain to procedures or requirements of the employer and do not bear a direct relation to the work required of the employee. The Board noted, however, that coverage under FECA would attach if the evidence surrounding the administrative or personnel action establishes error or abuse by managers in dealing with appellant. Absent evidence of such error or abuse, the resulting emotional condition must be considered self-generated and not employment generated. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.²⁴

Appellant alleged that her supervisor wrongly denied leave and continuation of pay, denied her lunch breaks, required her to work outside of her job duties, improperly took disciplinary actions against her for using leave and made her work beyond her physical restrictions. Although the handling of disciplinary actions, evaluations, leave requests, assignment of work duties and the monitoring of activities at work are generally related to the employment, they are administrative functions of the employer and not duties of the employee.²⁵ Absent a showing of error or abuse on the part of the employing establishment, these administrative matters are not compensable.²⁶ While appellant argued that Ms. Taylor would not allow her to take lunch breaks, eat or drink at her desk and perform duties outside of the scope of her position and physical limitations, she has not submitted any evidence to support her claim. Because she has not presented sufficient evidence that Ms. Taylor acted unreasonably or committed error or abuse, she has failed to identify a compensable work factor.²⁷

With respect to appellant's allegations that Ms. Taylor improperly denied her leave and continuation of pay, there is no evidence to establish that the employing establishment committed error or abuse. The record before the Board contains requests for notification of absence, some of which were denied by Ms. Taylor. While disability certificates provided by appellant's physicians note that appellant was excused on those dates, the evidence does not indicate whether the medical documentation was submitted to Ms. Taylor before or after she denied appellant's leave. Appellant further stated that Ms. Taylor lied when she stated that appellant bumped into her and improperly placed her in an off-duty status for which she filed a grievance. The record does not contain a final decision on that issue. Thus, the evidence does

²² *Supra* note 7

²³ *Supra* at note 9.

²⁴ See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

²⁵ *Cyndia R. Harrill*, 55 ECAB 399 (2004).

²⁶ *Id.*

²⁷ *H.C.*, Docket No. 12-457 (issued October 19, 2012).

not establish that the employing establishment acted unreasonably or committed error or abuse and appellant has failed to establish a compensable factor with respect to these allegations.²⁸

Appellant contended that she was harassed, subjected to retaliation and discriminated against by Ms. Taylor. Actions of a claimant's supervisor which the claimant characterizes as harassment may constitute a compensable factor of employment. However, for harassment to give rise to a compensable disability under FECA, there must be evidence that harassment or discrimination did, in fact, occur. Mere perceptions or feelings of harassment do not constitute a compensable factor of employment.²⁹ An employee's charges that she was harassed or discriminated against, is not determinative of whether or not harassment or discrimination occurred.³⁰ To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.³¹ Appellant contended that Ms. Taylor harassed her, improperly disciplined her for using sick leave and retaliated against her for filing grievances. She submitted a witness statement dated October 12, 2011 from Mr. Nelson, a fellow coworker. While Mr. Nelson stated generally that appellant had been harassed by Ms. Taylor, his statement did not contain any specific details supporting appellant's allegations of harassment and discrimination. He contended that he had witnessed Ms. Taylor harass appellant on several different occasions when she was unable to perform her duties because she was sick and threatened her with disciplinary action. Mr. Nelson failed, however, to address specific dates or what occurred between the parties. Appellant's generally stated assertions of dissatisfaction with her supervisor at work does not establish her allegations.³² Mere perceptions of harassment or discrimination are not compensable; and she must establish a basis in fact for the claim by supporting her allegations with probative and reliable evidence.³³ The Board finds that appellant has failed to establish that she was subjected to harassment by the employing establishment.

Appellant has not established any compensable work factors. The Board need not consider the medical evidence of record absent such a finding.³⁴ Thus, appellant failed to provide evidence to establish a compensable factor of employment and her claim was properly denied.

²⁸ Administrative and personnel matters also include the handling of disciplinary actions, evaluations and leave requests, the assignment of work duties, request for a different job and promotions or transfers where absent a showing of error or abuse, are not considered an employment factor. *See Harold B. Einarson*, Docket No. 00-348 (issued September 6, 2001).

²⁹ *J.C.*, 58 ECAB 594 (2007); *Robert G. Burns*, *supra* note 15; *Lorraine E. Schroeder*, 44 ECAB 323 (1992).

³⁰ *See Ronald K. Jablanski*, *supra* note 17; *William P. George*, 43 ECAB 1159 (1992).

³¹ *See G.S.*, Docket No. 09-764 (issued December 18, 2009); *C.S.*, 58 ECAB 137 (2006); *Frank A. McDowell*, 44 ECAB 522 (1993); *Ruthie M. Evans*, 41 ECAB 416 (1990).

³² *Supra* note 5.

³³ *Curtis Hall*, 45 ECAB 316 (1994); *Margaret S. Krzycki*, 43 ECAB 496 (1992).

³⁴ *Id.*

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained an emotional condition causally related to factors of her employment as a mail clerk.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated July 2, 2012 is affirmed.

Issued: March 13, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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