

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

D.P., Appellant	)	
	)	
and	)	<b>Docket No. 12-1859</b>
	)	<b>Issued: March 27, 2013</b>
U.S. POSTAL SERVICE, POST OFFICE, Houston, TX, Employer	)	
	)	

*Appearances:*  
Kenneth Brady, for the appellant  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
RICHARD J. DASCHBACH, Chief Judge  
ALEC J. KOROMILAS, Alternate Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On September 6, 2012 appellant, through her representative, filed a timely appeal from a March 21, 2012 decision of the Office of Workers' Compensation Programs (OWCP) denying her emotional condition claim. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (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 established that she sustained an emotional condition in the performance of duty.

On appeal appellant contends that the medical and factual evidence she submitted supports her claim and entitlement to benefits.

**FACTUAL HISTORY**

On September 13, 2011 appellant, then a 48-year-old city carrier, filed an occupational disease claim alleging that on July 25, 2011 she first realized that she suffered from occupational

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

stress. The employing establishment controverted the claim, noting that she stopped work on July 25, 2011. On September 13, 2011 Vicki Viteh, a supervisor, noted that appellant had been requested to submit medical documentation to support sick leave as of July 25, 2011. She did not submit evidence with her September claim.

In a September 22, 2011 letter, OWCP informed appellant that the evidence of record was insufficient to support her claim. Appellant was advised as to the medical and factual evidence required to establish her claim and given 30 days to provide additional evidence.

On September 27, 2011 OWCP received an August 31, 2011 report from Dr. Cyrus Sajadi, a treating psychiatrist, who diagnosed major depression and adjustment disorder which he attributed to her employment. Dr. Sajadi related that appellant had worked at the employing establishment for 27 years and alleged harassment at work and on her patrol route. Appellant also related having significant conflict with her supervisors, which included being charged with insubordination and ordered off the clock. Dr. Sajadi stated that she had a prior history of psychiatric treatment in 2002 and July 26, 2011 was admitted to an inpatient psychiatric unit to August 4, 2011. He noted that appellant was having suicidal and homicidal ideation with auditory hallucinations. Dr. Sajadi attributed appellant's condition to work stressors she identified.

Appellant submitted the contact forms from the Employee Assistance Program (EAP). It verified the date and time appellant had been seen at the EAP office during the period August 12, 2008 through July 25, 2011.

In an August 3, 2010 statement, Harvey L. Crowe, a coworker and former union steward, stated that he believed appellant had been harassed at work by Ms. Viteh and April Smith. He stated that he believed she was being nitpicked by these individuals.

In a July 22, 2011 statement, B.B. Shelvin, a coworker, stated that on July 21, 2011 he saw appellant being told to go off the clock with no explanation or reason given. He stated that he saw Ms. Smith escort appellant back to the time clock and heard her tell appellant to leave the premises. Mr. Shelvin also related that appellant was assigned to a new route which management did not give her time to learn or make corrections. He alleged that management treated her unfairly and set her apart from her coworkers.

In an August 3, 2010 statement, appellant alleged that since July 2010 she had been subjected to harassment, a hostile work environment and required to work in an unsafe environment. She alleged that she had been placed by management on a list called "the vital few" beginning in July 2010 and continuing. Appellant alleged that management treated her disrespectfully and unprofessionally, which included being placed off the clock for insubordination and harassing her. She attributed her depression to harassment at work. Appellant related that on July 21, 2011 her supervisor found her insubordinate and did not allow her to clock in at work. She alleged that she was not provided any details or documentation as to why her supervisor found her insubordinate. When appellant returned to work on July 25, 2011, she alleged that she was verbally harassed by Eric Rodriguez regarding her ID card while Kenneth Brady stood beside her while this was happening. She alleged that she felt trapped and that she was about to be attacked.

In a September 21, 2010 statement, J. Adams stated that she observed appellant being harassed on the route by Ms. Smith and Ms. Vitek during the week of July 22, 2010.

On November 23, 2011 OWCP received the employing establishment's response to appellant's allegations. Bob Sutkoff, Manager of Health and Resource Management, reviewed appellant's discipline file. He noted that no discipline was issued in July 2011 to appellant and that she had been sent home on full pay until she was brought back to work following a settlement. Mr. Sutkoff noted that appellant had a history of either not following instructions or failing to come into work on a regular basis. He provided the dates of discipline, which included February 25, 28, March 1 and June 1, 2011.

By decision dated November 23, 2011, OWCP denied appellant's claim. It found that she had failed to establish any compensable factors of employment.

On November 28, 2011 OWCP received a November 18, 2012 statement from Kenneth E. Brady, Manager of Customer Service, who responded to appellant's complaint and witness statements. Mr. Brady denied appellant's allegations. He stated that she was put off the clock because she was deemed a threat to herself and other carriers due to staying out until an unsafe hour regardless of the assistance given her. On July 25, 2011 Mr. Brady stated that Mr. Rodriguez questioned appellant about not wearing her ID badge as required. He denied appellant's allegations that Mr. Rodriguez verbally abused her or that they had trapped or cornered her. Mr. Brady stated that they stood at least four feet from her.

In a November 16, 2011 note, Sheila Jenkins, Ph.D., a clinical psychologist, stated that appellant was under her care for treatment of a severe major depressive disorder. She opined that appellant was totally disabled for work due to this condition and that appellant was also treated for post-traumatic stress symptoms.

On December 19, 2012 OWCP received an August 11, 2010 statement by Charles Vazquez; a December 12, 2011 statement of appellant; a December 9, 2011 addendum statement by Mr. Crowe; a July 25, 2011 admission note and admission information from Cypress Creek Hospital; a July 26, 2011 report from Dr. Frank Chen, a treating Board-certified psychiatrist; a July 3, 2008 Step B decision; an April 2, 2008 response from Mr. Brady denying appellant's allegations of supervisory harassment; and verification of an EAP visit on July 25, 2011.

On August 11, 2010 Mr. Vazquez stated that he observed Ms. Smith on July 26, 2010 either counting or doing an office observation on appellant. Ms. Smith also gave appellant a postal vehicle which was equipped with a GPS when it came time for her to go out on her route. Appellant informed Ms. Smith that the vehicle was dirty and that she wanted another vehicle. Ms. Smith gave appellant a direct order to use the vehicle she had been given.

On July 26, 2011 Dr. Chen diagnosed major recurrent and severe depressive disorder with psychotic feature. Under history of illness, he related that appellant had a history of treatment for depression and has worked at the employing establishment for 27 years. Appellant related being monitored since July 2010 and believes that she was being followed. She stated that management had talked to her about the amount of time she took to perform her job. Appellant alleged that she was being unfairly singled out and harassed by management at work.

In a December 9, 2011 statement, Mr. Crowe stated that he observed appellant being subjected to disciplinary and punitive actions by management. On July 15, 2010 he saw Ms. Viteh, a supervisor, standing closely behind appellant while she was casing mail and that Ms. Viteh made derogatory comments. The next incident occurred on July 20, 2010 when Mr. Crowe saw Ms. Smith speaking to appellant in a condescending and punitive manner regarding hurrying to pull down her route and street.

In a December 12, 2011 statement, appellant attributed her condition to harassment over a period of years and not to staff shortages. She alleged that the “vital few” list did exist and that she was not given enough time to learn her new route by management.

By decision dated December 19, 2011, OWCP denied appellant’s claim. It noted that errors were found in the November 23, 2011 decision with different claimants’ names and OWCP file numbers.

By letter dated December 12, 2011, received by OWCP on December 19, 2011, appellant requested a review of the written record by an OWCP hearing representative.

By decision dated March 21, 2012, an OWCP hearing representative affirmed the December 19, 2011 decision.

### **LEGAL PRECEDENT**

To establish a claim that she sustained an emotional condition in the performance of duty, an employee must submit the following: (1) medical evidence establishing that she has an emotional or psychiatric 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 emotional condition.<sup>2</sup>

Workers’ compensation law does not apply to each and every injury or illness that is somehow related to an employee’s employment.<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</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>6</sup>

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<sup>2</sup> V.W., 58 ECAB 428 (2007); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

<sup>3</sup> L.D., 58 ECAB 344 (2007); *Robert Breeden*, 57 ECAB 622 (2006).

<sup>4</sup> A.K., 58 ECAB 119 (2006); *David Apgar*, 57 ECAB 137 (2005).

<sup>5</sup> 5 U.S.C. §§ 8101-8193; *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>6</sup> J.F., 59 ECAB 331 (2008); *Gregorio E. Conde*, 52 ECAB 410 (2001).

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.<sup>7</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>8</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>9</sup>

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.<sup>10</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>11</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>12</sup>

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

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.<sup>15</sup> Mere perceptions of harassment or discrimination are not compensable under FECA.<sup>16</sup> A claimant must substantiate allegations of harassment or discrimination with probative and

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<sup>7</sup> See *Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991); *Lillian Cutler*, *supra* note 5.

<sup>8</sup> See *William H. Fortner*, 49 ECAB 324 (1998).

<sup>9</sup> *Ruth S. Johnson*, 46 ECAB 237 (1994).

<sup>10</sup> See *Matilda R. Wyatt*, *supra* note 7; *Thomas D. McEuen*, *supra* note 7.

<sup>11</sup> See *William H. Fortner*, *supra* note 8.

<sup>12</sup> *Ruth S. Johnson*, *supra* note 9.

<sup>13</sup> *S.M.*, Docket No. 09-2290 (issued July 12, 2010); *Linda J. Edwards-Delgado*, 55 ECAB 401 (2004).

<sup>14</sup> *C.T.*, Docket No. 08-2160 (issued May 7, 2009); *Jeral R. Gray*, 57 ECAB 611 (2006).

<sup>15</sup> *K.W.*, 59 ECAB 271 (2007); *Robert Breeden*, *supra* note 3.

<sup>16</sup> *M.D.*, 59 ECAB 211 (2007); *Robert G. Burns*, 57 ECAB 657 (2006).

reliable evidence.<sup>17</sup> Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.<sup>18</sup> A claimant must establish a factual basis for his or her allegations of harassment or discrimination with probative and reliable evidence.<sup>19</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 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>20</sup> If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor.<sup>21</sup> 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>22</sup>

### ANALYSIS

Appellant has not attributed that her emotional condition is related to her regular duties as a letter carrier under *Lillian Cutler*. Her allegations do not relate to such potential compensable factors as overwork or any claim of her inability to perform the duties required in her position.<sup>23</sup> Rather, appellant attributed her emotional reaction to harassment by management over a period of years. The Board must review whether the alleged incidents are established as compensable employment factors under the terms of FECA.

Appellant alleged a general pattern of harassment by management. Incidents of harassment, discrimination or retaliation by supervisors and coworkers, if established as occurring and arising from the employee's performance of his or her regular duties, could

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<sup>17</sup> *J.F.*, *supra* note 6; *Robert Breeden*, *supra* note 3.

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

<sup>19</sup> *Robert Breeden*, *supra* note 3; *Beverly R. Jones*, 55 ECAB 411 (2004).

<sup>20</sup> *D.L.*, 58 ECAB 217 (2006); *Jeral R. Gray*, 57 ECAB 611 (2006).

<sup>21</sup> *K.W.*, 59 ECAB 271 (2007); *David C. Lindsey, Jr.*, 56 ECAB 263 (2005).

<sup>22</sup> *Robert Breeden*, *supra* note 3.

<sup>23</sup> See *Reco Roncaglione*, 52 ECAB 454 (2001) (disagreement with the associate warden held not compensable, whether viewed as a disagreement with supervisory instructions or as perceived poor management); *Robert Knoke*, 51 ECAB 319 (2000) (where the employee attributed his emotional injury to the manner in which his supervisor spoke to him about undelivered mail, the Board found that a reaction to the instruction itself was not compensable, as work assignments given by supervisors in the exercise of supervisory discretion are actions taken in an administrative capacity and, as such, are outside the coverage of FECA); *Frank A. Catapano*, 46 ECAB 297 (1994) (supervisory instructions, with which the employee disagreed, held not compensable in the absence of evidence of managerial error or abuse); *Rudy Madril*, 45 ECAB 602 (1994) (where the employee questioned his supervisor's instructions to move from belt number five to belt number six and unload mail and became upset because he felt he was being pushed and picked on, the Board found that the incident was not a compensable factor of employment).

constitute employment factors.<sup>24</sup> To give rise to a compensable disability under FECA, there must be probative and reliable evidence that harassment did in fact occur.<sup>25</sup> Mere perceptions of harassment are not compensable under FECA.<sup>26</sup> An employee's charges that he or she was harassed or discriminated against, is not determinative of whether or not harassment or discrimination occurred.<sup>27</sup> 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.<sup>28</sup> Appellant did not submit evidence, such as witness statements, corroborating her allegations of harassment. She submitted witness statements from Mr. Crowe, Ms. Adams and Mr. Shelvin. Mr. Crowe and Ms. Adams contend that Ms. Viteh and Ms. Smith harassed appellant. However, none of the statements provided contain specific details supporting appellant's allegations of harassment. Mr. Crowe's August 3, 2010 statement and Ms. Adams' statement generally allege harassment but provided no identifiable instances of harassment details or specifics. Mr. Crowe provides no details as to what the derogatory comments or condescending manner consisted of. His December 9, 2011 addendum statement is also general and without specifics of harassment. In the December 9, 2011 addendum, Mr. Crowe stated that on July 15, 2010 he heard Ms. Viteh making derogatory comments to appellant and that he heard Ms. Smith speaking in a condescending manner to appellant on July 20, 2010. Similarly Mr. Shelvin's statement is also insufficient to establish appellant's harassment claim. He related seeing her on July 21, 2011 being escorted by Ms. Smith back to the time clock and told to leave the premises, but does not explain how this constituted harassment. Mr. Shelvin also noted that appellant had been assigned to a new route, but was not given time to learn it or make corrections. The record contains no evidence other than Mr. Shelvin's statement that appellant was not allowed to learn the new route. Mr. Brady stated that appellant was given assistance with her route and that the time she was put off the clock was because she was deemed to be a threat by staying out to an unsafe hour regardless of any assistance given her. Thus, appellant has not established a compensable factor under FECA with respect to the claimed harassment.

Consequently, appellant has not established her claim for an emotional condition as she has not attributed her claimed condition to any compensable employment factors.<sup>29</sup> She 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.

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<sup>24</sup> *C.T.*, *supra* note 14; *Robert G. Burns*, *supra* note 11.

<sup>25</sup> *G.S.*, *supra* note 18; *K.W.*, *supra* note 21; *Doretha M. Belnavis*, 57 ECAB 311 (2006); *Charles E. McAndrews*, 55 ECAB 711 (2004).

<sup>26</sup> *J.F.*, *supra* note 6; *Robert Breeden*; *supra* note 3; *Kim Nguyen*, 53 ECAB 127 (2001).

<sup>27</sup> *See Ronald K. Jablanski*, *supra* note 18; *William P. George*, 43 ECAB 1159 (1992).

<sup>28</sup> *See G.S.*, *supra* note 18; *C.S.*, 58 ECAB 137 (2006); *Frank A. McDowell*, 44 ECAB 522 (1993); *Ruthie M. Evans*, 41 ECAB 416 (1990).

<sup>29</sup> As appellant has failed to establish a compensable employment factor, the Board need not address the medical evidence of record; *see L.K.*, Docket No. 08-849 (issued June 23, 2009); *Alberta Dukes*, 56 ECAB 247 (2005); *Margaret S. Krzycki*, 43 ECAB 496 (1992).

**CONCLUSION**

The Board finds that the evidence fails to establish that appellant sustained an emotional condition in the performance of duty.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated March 21, 2012 is affirmed.

Issued: March 27, 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