

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

W.D., Appellant)

and)

**DEPARTMENT OF HEALTH & HUMAN
SERVICES, CENTERS FOR DISEASE
CONTROL & PREVENTION, Atlanta, GA,
Employer**)

**Docket No. 13-1522
Issued: November 14, 2013**

Appearances:
Patricia Champion, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 13, 2013 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs (OWCP) dated April 25, 2013 that denied her claim. 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 that she sustained an emotional condition in the performance of duty causally related to factors of her federal employment.

On appeal appellant's representative asserts that the employing establishment committed error and abuse in failing to process appellant's applications for promotion appropriately.

¹ 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

This case has previously been before the Board. In a November 17, 2005 decision, the Board found that OWCP properly refused to reopen appellant's case for further consideration of the merits pursuant to 5 U.S.C. § 8128(a).² In a January 14, 2008 decision, the Board found that appellant's March 2, 2007 reconsideration request was not timely filed and she failed to establish clear evidence of error. OWCP properly denied a merit review of her claim in its May 3, 2007 decision.³ In a November 5, 2012 decision, the Board found that appellant did not meet her burden of proof that she sustained an emotional condition in the performance of duty as she did not establish a compensable factor of employment. The Board affirmed a January 12, 2012 OWCP decision.⁴ The facts of the previous Board decisions are incorporated herein by reference.

On February 25, 2013 appellant, through her representative, requested reconsideration and asserted that the employing establishment committed error when appellant was not considered for promotion. She submitted a partial, unsigned investigative document dated August 26, 2002 that discussed an Equal Employment Opportunity (EEO) complaint filed by appellant. In a February 18, 2013 report, Dr. A. Benjamin Eubanks, an attending psychiatrist, noted that appellant had been his patient for 12 years and that he had read the Board's decisions. It was his opinion that appellant took proper measures to file EEO complaints to prevent further injury and that the employing establishment EEO process persistently failed to properly investigate her complaints. Dr. Eubanks maintained that this was only a small part of the aggravation of her PTSD, asserting that the major factor that caused appellant to decompensate was when she learned that the employing establishment erred and failed to submit her name for a merit promotion. It did not give her the opportunity to compete for advancement, even though she had obtained a graduate degree. Dr. Eubanks stated that this omission completely destroyed appellant emotionally and caused her to decompensate to the point of full PTSD. He concluded that appellant, who was in a chronic state of vegetative depression and post-traumatic stress, remained totally and permanently disabled as a result of the work experiences.

In a merit decision dated April 25, 2013, OWCP denied modification of its prior decision.

² Docket No. 05-754 (issued November 17, 2005). On February 25, 2002 appellant, a health communications specialist, who last worked on January 16, 2002, filed an occupational disease claim, alleging that employment factors caused an emotional condition. The claim was adjudicated under file number xxxxxx622. On September 26, 2002 OWCP denied the claim, finding that appellant did not establish that she sustained an emotional condition in the performance of duty. Appellant retired in 2003. On October 21, 2003 an OWCP hearing representative found that appellant established one compensable work factor but that the medical evidence did not support that her condition was caused by the accepted factor. In a November 9, 2004 nonmerit decision, OWCP denied appellant's reconsideration request.

³ Docket No. 07-2002 (issued January 14, 2008).

⁴ Docket No. 12-860 (issued November 5, 2012). The Board noted that, on April 10, 2008, appellant filed a new occupational disease claim alleging that her federal employment aggravated her depression and anxiety causing her to develop post-traumatic stress disorder (PTSD). Appellant stated that she was first aware of her PTSD and its relationship to employment on April 1, 2008. This claim was adjudicated under file number xxxxxx431, which was combined with file number xxxxxx622.

LEGAL PRECEDENT

To establish her claim that she sustained an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that she has an emotional or stress-related 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 stress-related condition.⁵ If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor.⁶ 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.⁷

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,⁸ the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under FECA. There are situations where an injury or illness has some connection with the employment but nevertheless does not come within coverage under FECA.⁹ When an employee experiences emotional stress in carrying out his or her employment duties and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability results from his or her emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of the work.¹⁰ Allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.¹¹ Where the claimant alleges compensable factors of employment, he or she must substantiate such allegations with probative and reliable evidence.¹² Personal perceptions alone are insufficient to establish an employment-related emotional condition.¹³

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regular or specially

⁵ *Leslie C. Moore*, 52 ECAB 132 (2000).

⁶ *Dennis J. Balogh*, 52 ECAB 232 (2001).

⁷ *Id.*

⁸ 28 ECAB 125 (1976).

⁹ *See Robert W. Johns*, 51 ECAB 137 (1999).

¹⁰ *Lillian Cutler*, *supra* note 8.

¹¹ *J.F.*, 59 ECAB 331 (2008).

¹² *M.D.*, 59 ECAB 211 (2007).

¹³ *Roger Williams*, 52 ECAB 468 (2001).

assigned work duties of the employee and are not covered under FECA.¹⁴ Where the evidence demonstrates that the employing establishment either erred or acted abusively in discharging its administrative or personnel responsibilities, such action will be considered a compensable employment factor.¹⁵

ANALYSIS

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 causally related to factors of her federal employment.

On February 25, 2013 appellant requested reconsideration of her claim for an emotional condition and submitted factual and medical evidence. As in previous submissions in this case, she did not attribute her emotional condition to the performance of her regular work duties or to any special work requirement arising from her employment duties under *Cutler*.¹⁶ Rather, in her February 2013 reconsideration request and her appeal to the Board, appellant asserted that the employing establishment committed error when her applications for promotion were not properly processed. In support of this contention, she submitted an unsigned, unidentified, incomplete report dated August 26, 2002. The report pertains to an EEO investigation. As its provenance is unknown and unverified, it is of no probative value to establish error by management in the processing of materials for consideration of promotion.¹⁷ Moreover, it contains nothing that establishes error on the part of the employing establishment.¹⁸ Appellant therefore has not established that the employing establishment committed error or abuse regarding her applications for promotion.¹⁹

Lastly, as appellant failed to establish a compensable employment factor, the Board need not address the medical evidence of record.²⁰

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.

¹⁴ *Charles D. Edwards*, 55 ECAB 258 (2004).

¹⁵ *Kim Nguyen*, 53 ECAB 127 (2001).

¹⁶ *See James E. Norris*, 52 ECAB 93 (2000).

¹⁷ *See C.B.*, Docket No. 09-2027 (issued May 12, 2010).

¹⁸ The Board notes that the report also contains a list of exhibits that were not forwarded with the reconsideration request.

¹⁹ *Kim Nguyen*, *supra* note 15.

²⁰ *Katherine A. Berg*, 54 ECAB 262 (2002).

CONCLUSION

The Board finds that appellant did not establish that she sustained an emotional condition in the performance of duty.

ORDER

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

Issued: November 14, 2013
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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