

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

C.C., Appellant)

and)

**DEPARTMENT OF AGRICULTURE, GRAIN)
INSPECTION, PACKERS & STOCKYARD)
ADMINISTRATION, League City, TX, Employer)**

**Docket No. 13-1134
Issued: September 13, 2013**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 10, 2013 appellant filed a timely appeal from a March 21, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 has established an emotional condition causally related to compensable work factors.

FACTUAL HISTORY

The case was before the Board on a prior appeal. By order dated January 12, 2012, the Board found that a May 5, 2011 OWCP decision had not made adequate factual findings as to

¹ 5 U.S.C. § 8101 *et seq.*

appellant's allegations. The case was remanded for proper factual findings and an appropriate decision.²

Appellant submitted a January 7, 2011 e-mail to her supervisor, Mark Kemp, alleging harassment by her supervisors. She noted that she had filed a prior claim,³ that supervisors delayed processing of an OWCP acceptance letter, that she had been accused of stealing letterhead pages and forging reports from her physicians, briefly referred to an investigation. Appellant also stated that her "time [had not] been restored" due to not submitting a form, and generally referred to travel vouchers, insurance and overtime. She also submitted a March 1, 2011 e-mail referring to an "unannounced" visit by Dave Grady and Ana Trujillo, supervisors to her physician.

In a January 25, 2011 response, Mr. Grady stated that appellant's paperwork regarding her prior claim had not been delayed and her claim was paid and closed. He stated that the physicians had been contacted to clarify discrepancies between the dates of compensation claimed by appellant and the treatment provided. According to Mr. Grady, no allegations were made that appellant had taken any physician letterhead or signature stamps and no one was asked to verify her handwriting. He enclosed some responses from physicians with respect to appellant's treatment.

In a letter dated March 21, 2011, Mr. Grady reiterated that there was no delay in sending compensation documents. He stated that a meeting was held on September 10, 2010 with appellant to discuss discrepancies in the medical evidence, but she left the meeting without discussion. Mr. Grady explained that at approximately 6:00 p.m. on Friday, September 10, 2010, he received a call from her stating that she was at Dr. Mayen's office trying to clear everything up. Appellant apologized that her medical documentation could not be verified, and asked that she speak with Dr. Mayen. Mr. Grady told her that he was driving and could not speak to Dr. Mayen, but she handed the phone to Dr. Mayen. He then explained to Dr. Mayen that he could not speak to him at that particular moment and would return the call on Monday. At appellant's and Dr. Mayen's request he returned the call on Monday, to discuss discrepancies related to appellant's medical documentation. Dr. Mayen related that he did not have a record of several of her appointments and that he did not write a letter dated January 5, 2010.

In a letter dated March 21, 2011, Ray Lavine stated that appellant had been reassigned to a new duty station after being allowed to choose a duty station where she felt comfortable. He stated that she had not been harassed and every effort was made to accommodate her. In a March 21, 2011 letter, Ms. Trujillo stated that she had never alleged that appellant had stolen letterhead or signature stamps from physicians, and had never presented herself as an investigator. She stated that forms were faxed to physicians for verification of appointments only. In a March 25, 2011 letter, Mr. Kemp stated that although appellant believed her paperwork was being delayed such allegations were untrue.

² Docket No. 11-482 (issued January 12, 2012).

³ The record contains an August 17, 2010 letter stating that a claim for injury on August 16, 2009 had been accepted for acute reaction to stress.

On July 5, 2011 appellant submitted additional evidence alleging that she was treated differently than other employees, referring to her OWCP claim, a “leave donor program,” that she could only be on the computer one hour a week and that her desk faced the wall. She submitted e-mails she sent to various officials regarding her claim for compensation and allegations of harassment.

By decision dated November 20, 2012, OWCP denied appellant’s claim for compensation. It found that she had not substantiated any compensable work factors. On December 20, 2012 appellant requested a review of the written record.

Appellant submitted additional evidence on January 3, 2013. A February 2, 2011 e-mail noted that her travel reimbursement was denied because she did not follow procedure or seek prior approval. In a December 18, 2012 statement, appellant reiterated her claims of harassment and disparate treatment by her supervisors. She stated that she had been paid administrative leave since January 19, 2012. Appellant submitted evidence of Equal Employment Opportunity Commission (EEOC) claim of discrimination based on race, age, sex, physical and mental disability and reprisal for a prior EEOC claim. The record contains an affidavit from her and an affidavit from Mr. Grady dated February 6, 2012 with respect to the EEO claim.

In a final order dated November 17, 2011, an EEOC Administrative Judge had issued a September 7, 2011 order dismissing the complaint because appellant had failed to meet her burden to establish discrimination based on race, age, sex, disability or reprisal. In a letter dated January 22, 2013, Mr. Grady reiterated that appellant was not harassed at the employing establishment.

By decision dated March 21, 2013, OWCP’s hearing representative affirmed the November 20, 2012 decision. The hearing representative found appellant had not established a compensable work factor.

LEGAL PRECEDENT

A claimant 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 factors of his or her federal employment.⁴ This burden includes the submission of detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.⁵ A claimant must also submit rationalized medical opinion evidence establishing a causal relationship between the claimed condition and the established, compensable work factors.⁶

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 illness has some connection with the employment but nevertheless does not come within the coverage of

⁴ *Pamela R. Rice*, 38 ECAB 838 (1987).

⁵ *Roger Williams*, 52 ECAB 468 (2001); *Anna C. Leanza*, 48 ECAB 115 (1996).

⁶ *See Bonnie Goodman*, 50 ECAB 139, 141 (1998).

workers' compensation. These injuries occur in the course of the employment and have some kind of causal connection with it but nevertheless are not covered because they are found not to have arisen out of the employment. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position, or secure a promotion. On the other hand, where disability results from an employee's emotional reaction to his or her regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA.⁷

A reaction to an administrative or personnel matter is generally not covered as it is not related to the performance of regular or specially assigned duties.⁸ Nevertheless, if the evidence demonstrates that the employing establishment erred, acted abusively or unreasonably in the administration of a personnel matter, any physical or emotional condition arising in reaction to such error or abuse may be covered.⁹ With respect to a claim based on harassment or discrimination, the Board has held that actions of an employee's supervisors or coworkers which the employee characterizes as harassment may constitute a factor of employment giving rise to a compensable disability under FECA. A claimant must, however, establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.¹⁰ An employee's allegation that he or she was harassed or discriminated against is not determinative of whether or not harassment occurred.¹¹

ANALYSIS

Appellant alleged harassment and discrimination by her supervisors. Such allegations must be supported by probative and reliable evidence. Appellant filed an EEO complaint of discrimination, but the filing of such a complaint does not establish discrimination.¹² The EEO complaint was dismissed by an administrative judge and, while EEOC findings are not dispositive of the issue under FECA,¹³ the record of the proceeding does not support a finding of discrimination in the absence of other probative evidence.

With respect to specific incidents of alleged harassment, appellant identified actions by her supervisors with respect to her prior claim for compensation. It is well established that the processing of a compensation claim is considered an administrative or personnel matter, compensable only if error or abuse by the employing establishment is substantiated.¹⁴ Appellant

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

⁸ *See Brian H. Derrick*, 51 ECAB 417, 421 (2000).

⁹ *Margreate Lublin*, 44 ECAB 945, 956 (1993).

¹⁰ *Gregory N. Waite*, 46 ECAB 662 (1995); *Barbara J. Nicholson*, 45 ECAB 803 (1994).

¹¹ *Helen P. Allen*, 47 ECAB 141 (1995).

¹² *See C.O.*, Docket No. 12-1435 (issued January 15, 2013).

¹³ *See Pamela D. Casey*, 57 ECAB 260 (2005).

¹⁴ *See David C. Lindsey, Jr.*, 56 ECAB 268 (2005).

alleged delay with respect to her prior claim, but no evidence of error or abuse was presented. The supervisors addressed the claim and stated that there was no delay in the processing of her claim. The record indicated that appellant's claim was accepted and compensation paid. Appellant referred to the issue of leave buyback, without providing any probative evidence of error or abuse. She also dismissed medical documentation as it related to the dates of compensation claimed. Appellant alleged, without further explanation, a violation of Health Insurance Portability and Accountability Act.¹⁵ She alleged that her supervisors falsely presented as investigators to her physicians and accused her of stealing letterhead papers from her physicians. Appellant did not support her allegations with probative evidence of error or abuse. The supervisors denied any accusations of stealing or posing as investigators. The evidence of record reflects that her supervisors attempted to assist appellant with her compensation claim by clarifying the actual dates of treatment by faxing forms to appellant's physician. The evidence of record also establishes that Mr. Grady spoke with Dr. Mayen, as a courtesy, at appellant's request. Section 10.506 of Title 20 of the Code of Federal Regulations provide that the employing establishment may monitor the employee's medical progress and duty status by obtaining periodic medical reports, and the employing establishment may contact the employee's physician in writing concerning work limitation imposed by the effects of the injury and possible job assignment, however, the employing establishment shall not contact the physician by telephone or through personal visit. Mr. Grady's telephone contact with Dr. Mayen occurred at appellant's request. The Board finds no probative evidence in the record of error or abuse in this regard.

The remaining allegations relate to administrative or personnel matters, such as travel reimbursement and a change in duty station. The record established that appellant received travel reimbursement after completing the proper forms, and was offered a choice of duty stations as a medical accommodation. Appellant also noted that she had been placed on paid administrative leave, without providing any evidence of error or abuse in this regard.

The Board finds the evidence of record does not substantiate a compensable work factor with respect to appellant's claim. There is not probative evidence of harassment, discrimination or error with respect to an administrative matter. Since appellant has not established a compensable work factor, the Board will not address the medical evidence.¹⁶

On appeal, appellant reiterates her arguments that OWCP committed error with respect to her prior claim for compensation and regarding administrative or personnel matters. As noted above, the Board has reviewed the evidence and finds that it does not establish a compensable work factor. It is not enough to allege error, there must be relevant and probative evidence supporting the allegation. 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.

¹⁵ Pub. L. 104-191, 110 Stat. 1936 (1996).

¹⁶ See *Margaret S. Krzycki*, 43 ECAB 496 (1992).

CONCLUSION

The Board finds that appellant has not established an emotional condition causally related to a compensable work factor.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 21, 2013 is affirmed.

Issued: September 13, 2013
Washington, DC

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

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

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