

FACTUAL HISTORY

On January 12, 2012 appellant, a 40-year-old secretary, filed an occupational disease claim alleging an adjustment disorder with mixed feature as the result of her federal employment. She first became aware of her disease or illness on December 1, 2011. Appellant explained that an increase in the inmate population caused an increase in her physical and mental anguish. “Priorities, superseding other demands of paperwork. I began rushing through tasks quickly to complete deadlines for job productivity. Routing documents to other areas became very constant.”

A psychiatrist, whose name is illegible, completed an attending physician’s form report on January 5, 2011. He stated that appellant was unable to work since August 25, 2011 and that her diagnosed adjustment disorder with mixed features was caused or aggravated by an employment activity, which the physician did not identify or explain.

In a February 29, 2012 decision, OWCP denied appellant’s injury claim. It found that the factual component of fact of injury was not met. Specifically, appellant did not provide a description of the specific incidents or conditions that she felt led to her medical condition.

Appellant requested reconsideration. Her representative contended that the employing establishment acted arbitrarily in subjecting her to discipline. Specifically, the employing establishment’s “write-ups” were not based on factual evidence. The adverse action letters were revoked and rescinded. Appellant was terminated while on sick leave. Proof of these wrongful actions, the representative explained, consisted of medical evidence addressing causal relationship.

OWCP received a May 8, 2012 memorandum from a senior officer specialist and union representative, who described a meeting on June 29, 2011 during which appellant’s performance and training were discussed. The union representative indicated that appellant was assured that her work would be taken care of while she was on annual leave, but a week or two after her return from annual leave another meeting was held to inform her that her work had fallen behind.

On April 11, 2013 OWCP reviewed the merits of appellant’s case and found that the evidence was insufficient to establish a factual basis for her claim. The union representative’s memorandum was not an allegation by appellant in support of her claim. The mention of “write-ups” and “adverse actions” were too vague and provided no specifics as to time and place. Together, there was no documentation, such as disciplinary letters or termination paperwork, to support that the incidents ever occurred. OWCP noted that medical evidence could not establish the factual basis of appellant’s allegations. Appellant’s statements were found too vague to establish error or abuse. OWCP denied modification of its prior decision.

LEGAL PRECEDENT

FECA provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.² An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim. When an

² 5 U.S.C. § 8102(a).

employee claims that he or she sustained an injury in the performance of duty, he or she must submit sufficient evidence to establish that he or she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. He or she must also establish that such event, incident or exposure caused an injury.³

Workers' compensation does not cover each and every illness that is somehow related to the employment. When an employee experiences emotional stress in carrying out his or her employment duties or has fear and anxiety regarding his or her ability to carry out his or her duties, and the medical evidence establishes that the disability resulted from his or her emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. By contrast, there are disabilities having some kind of causal connection with the employment that are not covered under workers' compensation because they are not found to have arisen out of employment, such as when disability results from an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or to hold a particular position.⁴

Thus, the Board has held that an oral reprimand generally does not constitute a compensable factor of employment,⁵ neither do disciplinary matters consisting of counseling sessions, discussion or letters of warning for conduct;⁶ investigations;⁷ determinations concerning promotions and the work environment;⁸ discussions about an SF-171;⁹ reassignment and subsequent denial of requests for transfer;¹⁰ discussion about the employee's relationship with other supervisors;¹¹ or the monitoring of work by a supervisor.¹² Further, workers' compensation does not cover an emotional reaction to an administrative or personnel action, unless the evidence establishes error or abuse on the part of the employing establishment.¹³

As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.¹⁴ In claims for a mental disability attributed to work-related

³ *John J. Carlone*, 41 ECAB 354 (1989).

⁴ *Lillian Cutler*, 28 ECAB 125 (1976).

⁵ *Joseph F. McHale*, 45 ECAB 669 (1994).

⁶ *Barbara J. Nicholson*, 45 ECAB 803 (1994); *Barbara E. Hamm*, 45 ECAB 843 (1994).

⁷ *Sandra F. Powell*, 45 ECAB 877 (1994).

⁸ *Merriett J. Kauffman*, 45 ECAB 696 (1994).

⁹ *Lorna R. Strong*, 45 ECAB 470 (1994).

¹⁰ *James W. Griffin*, 45 ECAB 774 (1994).

¹¹ *Raul Campbell*, 45 ECAB 869 (1994).

¹² *Daryl R. Davis*, 45 ECAB 907 (1994).

¹³ *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566, 572-73 (1991).

¹⁴ See *Arthur F. Hougens*, 42 ECAB 455 (1991); *Ruthie M. Evans*, 41 ECAB 416 (1990) (in each case the Board looked beyond the claimant's allegations of unfair treatment to determine if the evidence corroborated such allegations).

stress, the claimant must submit factual evidence in support of his or her allegations of stress from harassment or a difficult working relationship. The claimant must specifically delineate those factors or incidents to which the emotional condition is attributed and submit supporting factual evidence verifying that the implicated work situations or incidents occurred as alleged. Vague or general allegations of perceived harassment, abuse or difficulty arising in the employment are insufficient to give rise to compensability under FECA. Based on the evidence submitted by the claimant and the employing establishment, OWCP is then required to make factual findings which are reviewable by the Board. The primary reason for requiring factual evidence from the claimant in support of her allegations of stress in the workplace is to establish a basis in fact for the contentions made, as opposed to mere perceptions of the claimant, which in turn may be fully examined and evaluated by OWCP and the Board.¹⁵

ANALYSIS

On her claim form, appellant attributed her emotional condition to her federal employment. She implicated an increase in the inmate population and changing priorities. Appellant stated that she began rushing through tasks quickly to complete deadlines for job productivity.

Appellant thus appears to be arguing that she experienced emotional stress in carrying out her employment duties, which may contribute a compensable employment factor. As the Board noted above, allegations alone are insufficient, as a rule, to establish a factual basis for an emotional condition claim. Appellant must specifically delineate those factors or incidents to which the emotional condition is attributed and submit supporting factual evidence verifying that the implicated work situations or incidents occurred as alleged. Vague or general allegations of difficulty arising in the employment are insufficient to give rise to compensability under FECA.

OWCP correctly found that the employment factors to which appellant attributed her emotional condition were not sufficiently identified as to time, place or parties involved and were not supported by factual evidence.

Requesting reconsideration, appellant's representative changed the nature of the claim. He implicated administrative error or abuse, or what he described as "wrongful actions." Counsel contended that the employing establishment acted illegally and arbitrarily in subjecting appellant to discipline, that "write-ups" were not based on factual evidence, that "adverse action" letters were revoked and rescinded and that appellant was terminated while on sick leave.

The Board has recognized that where the evidence establishes error or abuse by the employing establishment in an administrative or personnel matter, a compensable factor may arise. The record in appellant's case is devoid of such evidence. A union representative's memorandum indicated that the employing establishment made an assurance that appellant's work would be taken care of while she was on annual leave, but the record on appeal remains unclear whether her work fell behind while she was on leave or during the period following her return. In any event, there is no evidence that the employing establishment took any action in the matter.

¹⁵ *Paul Trotman-Hall*, 45 ECAB 229 (1993) (Groom, Alternate Member, concurring).

The Board finds that appellant has not established a factual basis for her claim. The allegations lack specificity, context and explanation and are unsupported by any evidence. Even the nature of appellant's claim remains vague. She described rushing through tasks to complete deadlines for job productivity and then made claims of administrative wrongdoing. As appellant has not established a factual basis for her claim, she has not met her burden of proof to establish that she sustained an emotional condition in the performance of duty. Accordingly, the Board will affirm OWCP's April 11, 2013 decision.

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 has not established a factual basis for her claim and thus has not established that she sustained an emotional condition in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the April 11, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 20, 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